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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF HOME AFFAIRS

[Border Security (I) Section]

NOTIFICATION

New Delhi, the 9th June 1969

S.O. 2336.—In exercise of the powers conferred by sub-section (1) and (2) of section 141 of the Border Security Force Act, 1968 (47 of 1968), the Central Government hereby makes the following rules, namely:—

The Border Security Force Rules, 1969.

CHAPETR I

Preliminary

1. **Short title and application.**—(1) These rules may be called the Border Security Force Rules, 1969.

(2) They shall come into force on the date of their publication in the Official Gazette.

(3) These rules shall apply to all persons subject to the Act.

Provided that the provisions of Chapter IV thereof shall not apply to persons belonging to the All India Services and other Government servants who are on deputation with the Border Security Force.

2. **Definitions.**—In these rules, unless the context otherwise requires,—

(a) "the Act" means the Border Security Force Act, 1968 (47 of 1968),

(b) "Appendix" means an Appendix annexed to these rules,

(c) "Court" means the Security Force Court,

(d) "Detachment" includes any part of the battalion required or ordered to proceed on duty away from Headquarters,

(e) "proper Force authority" when used in relation to any power, duty, act or matter, means such Force authority as, in pursuance of these rules made under the Act, exercises, or performs that power or duty or is concerned with that matter,

(f) "Section" means a section of the Act,

(g) all words and expressions used in these rules and defined in the Act shall have the same meaning as in the Act.

3. **Reports and applications.**—Any report or application directed by these rules to be made to a superior officer, or to a proper Force authority shall be made in writing through the proper channel, unless the said authority, on account of exigencies of service or otherwise, dispenses with the writing.

4. **Forms in appendices.**—(1) The forms set forth in the appendices, with such variations as the circumstances of each case may require, may be used for the respective purposes therein mentioned, and if used shall be sufficient, but a deviation from such forms shall not, by reason only of such deviation, render invalid any charge, warrant, order, proceedings or any other document relevant to these rules.

(2) Any omission of any such form shall not, by reason only of such omission, render any act or thing invalid.

(3) The directions in the notes to and the instructions in the form shall be duly complied with in all cases to which they relate, but any omission to comply with any such direction in the notes or instructions shall not, merely by reason of such omission, render any act or thing invalid.

5. **Exercise of power vested in holder of an office in the Force.**—Any power or jurisdiction given to any person holding any office in the Force to do any act or thing to, or before, any person, may, for the purposes of these rules, be exercised by any other person who may, for the time being, be performing the functions of that office in accordance with the rules and practice of the Force.

6. **Case unprovided for.**—In regard to any matter not specifically provided for in these rules, it shall be lawful for the competent authority to do such thing or take such action as may be just and proper in the circumstances of the case.

CHAPTER II

Recruitment

7. **Ineligibility.**—(1) No person, who has more than one wife living or who having a spouse living marries in any case in which such marriage is void by reason of its taking place during the life time of such spouse, shall be eligible for appointment, enrolment, or employment in the Force, and

(2) no woman shall be eligible for appointment, enrolment or employment in the Force:

Provided that the Central Government may if satisfied, that there are sufficient grounds for so ordering exempt any person from the operation of this rule.

8. **Ineligibility of aliens.**—No person who is not a citizen of India shall, except with the consent of the Central Government signified in writing, be appointed, enrolled or employed in the Force.

Provided that nothing contained in this rule shall bar the appointment, enrolment or employment of a subject of Nepal, Sikkim or Bhutan in the Force.

9. **Appointment of officers.**—The Central Government may appoint such persons as it considers to be suitable as officers in the Force, and their conditions of service shall be such as may be provided in the rules made in this behalf by the Central Government.

10. **Probation.**—(1) An Officer on first appointment to the Force against a permanent post shall be on probation for a period of two years and the Central Government may, for reasons to be recorded in writing, extend the period of probation for such further period or periods not exceeding one year;

(2) The Central Government may, during the period of probation, terminate the services of an officer without assigning any reasons.

11. **Appointment of subordinate Officers and under Officers.**—Appointments to the posts of Subedars, Sub-Inspectors and Under Officers for the Force may be made by the Inspector-General, the Deputy Inspector-General and the Commandant respectively,

(a) by direct recruitment;

(b) by deputation from the Army, Navy, Air Force, State Police Force, or any other Department of the Central Government or of the State Government;

(c) by promotion as may be prescribed from time to time.

12. **Enrolling Officers.**—For the purposes of enrolment of persons to the Force under section 6, the following persons shall be enrolling officers:—

(a) Commandants of all battalions; and

(b) any other officer of the Force who may be appointed as an enrolling officer by the Director-General.

13. **Procedure for enrolment, mode of enrolment and other matters connected therewith.**—(1) Upon the appearance before the enrolling officer of any person desirous of being enrolled, the enrolling officer shall read and explain to him, or cause to be read and explained to him in his presence, the conditions of service for which he is to be enrolled; and shall put to him the questions contained in the form of enrolment set out in Appendix I and shall, after having cautioned him that if he makes a false answer to any such question he shall be liable to punishment under the Act, record or cause to be recorded his answer to each such question.

(2) If, after complying with the provisions of sub-rule (1) and such other directions as may be issued in this behalf by the Director-General from time to time, the enrolling officer is satisfied that the person desirous of being enrolled, fully understands the questions put to him and consent to the conditions of service, and if the said officer is satisfied that there is no impediment, he shall sign and shall also cause such person to sign the enrolment paper, and such person shall thereupon be deemed to be enrolled.

(3) (a) Every person enrolled as a member of the Force under sub-rule (2) shall be administered an oath or affirmation in the form set out in Appendix I.

(b) The oath or affirmation shall as far as possible be administered by the Commandant of the person to be attested or in the unavoidable absence of the Commandant by the person authorised in writing by the Commandant in this behalf.

(c) The oath or affirmation shall be administered when the person to be attested has completed his training.

CHAPTER III

Organisation

14. **Ranks.**—(1) The officers and other members of the Force shall be classified in accordance with their ranks in the following categories, namely:—

(a) *Officers*

(1) Director-General.

(2) Inspector-General.

(3) Additional Inspector-General.

(4) Deputy Inspector-General.

(5) Additional Deputy Inspector-General

(6) Commandant.

(7) Deputy Commandant.

(8) Assistant Commandant.

(b) *Subordinate Officers*

(9) Subedar-Major.

(10) Subedar.

(11) Sub-Inspector.

(c) *Under Officers*

(12) Head Constable.

(13) Naik.

(14) Lance Naik.

(d) *Enrolled persons other than Under Officers*

(15) Constables.

(16) Enrolled followers.

(2) Matters relating to *inter se* seniority of persons belonging to the same rank shall be determined in accordance with such rules as may be made in this behalf.

Explanation.—For the purpose of this rule,—

(1) Sub-Inspector shall include an Assistant Sub-Inspector in the case of signals personnel of the Force.

(2) The Commandants of Border Security Force Academy, Border Security Force Centre and School, Hazaribagh and Central School of Weapons and Tactics, Indore, shall have the rank of Deputy Inspector-General and the Deputy Commandants of the institutions aforesaid shall have the rank of Additional Deputy Inspector-General.

(3) The Commandant of the Signal Training Centre shall have the rank of Additional Deputy Inspector-General and the Deputy Commandant of the said School shall have the rank of a Commandant.

15. **The task of the Force and Command and Control thereto.**—(1) For the purposes of sub-section (1) of section 4, the Force shall,—

(i) promote a sense of security among the people living in the border areas;

(ii) prevent trans-border crimes, un-authorised entry into or exist from the territory of India;

(iii) prevent smuggling and any other illegal activity.

(2) In discharging the functions under sub-rule (1), the responsibility for the command, discipline, morale and administration shall,—

(a) in the case of Inspector-General, extend to all battalions, units, headquarters establishments and Force personnel placed under him and within the area assigned to him;

(b) in the case of a Deputy Inspector-General, extend to all the battalions, other personnel and units placed under him and within the area assigned to him; and

(c) in the case of a Commandant, extend to the battalion or unit placed under him and within the area assigned to him.

(3) During hostilities, the Inspector-General, the Deputy Inspector-General and the Commandant shall discharge such functions as may be assigned by their respective superiors.

(4) The command, discipline, administration and training of battalions, units and establishments not placed under a Deputy Inspector General or an Inspector General shall be carried out by such officers and in such manner as may from time be laid down by the Director General.

(5) Any member of the Force shall be liable to perform any duties in connection with the safeguarding of the security of the border of India, the administration, discipline and welfare of the Force and such other duties as he may be called upon to perform in accordance with any law for the time being in force and any order given in this behalf by a superior officer shall be a lawful command for the purposes of the Act.

16. **Command.**—(1) An officer appointed to command shall have the power of command over all officers and men, irrespective of seniority placed under his command.

(2) (a) In the contingency of an officer being unable to exercise the command, to which he has been appointed, due to any reason, the command shall devolve on the second-in-command, if one has been so appointed.

(b) If no second-in-command has been appointed, it shall devolve on the officer who may be appointed to officiate by the immediate superior of the officer unable to exercise command.

(c) If no such officer has been so appointed, command shall devolve on the senior most officer present.

(d) The inability of an officer to exercise command and its assumption by any other officer in accordance with this sub-rule shall be immediately reported to Force Headquarters by the officer who has assumed command.

(3) If persons belonging to different battalions and units are working together:—

(i) in regard to the specific task on which they are engaged, the officer appointed to command or in his absence the senior most officer present shall exercise command over all such persons,

(ii) in all other matters the senior officer belonging to each battalion shall exercise command over persons belonging to his battalion.

(4) When officers and other persons belonging to the Force are taken prisoner by an enemy the existing relations of superior and subordinate and the duty of obedience shall remain unaltered and any person guilty of indiscipline or insubordination in this behalf shall, after his release, be liable for punishment.

(5) Disciplinary powers over a person subject to the Act shall be exercised by the Commandant of the battalion or unit to which such a person belongs or the officer on whom command has devolved in accordance with sub-rule (2).

(6) Where such a person is doing detachment duty, including attendance at a course of instruction the Commandant of the battalion, unit, centre or establishment with which he is doing such duty shall also have all the disciplinary powers of a Commandant.

(7) The Director-General, the Inspector-General and the Deputy Inspector-General may specify one or more officers of the staff who shall exercise the disciplinary powers of a Commandant in respect of persons belonging to or doing detachment duty at their respective Headquarters.

Explanation.—In this rule, except in sub-rule (2), the word "officer" shall include a subordinate officer and an under officer.

CHAPTER IV

Termination of Service

17. **Retirement on grounds of unsuitability.**—(1) Where the Directcor-General is of the opinion that an officer is unfit to be retained in service, he may recommend to the Central Government that the officer be retired from service.

(2) He shall also forward to the Central Government the reasons for his recommendation alongwith the record of service of the officer.

(3) The Central Government may on receipt of such recommendation and after giving the officer an opportunity to explain his case pass such order as it may deem fit:

Provided that where in the interest of security of the State it would be inexpedient so to do it shall be lawful for the Government to pass an order as aforesaid without giving the officer the opportunity to explain his case.

18. **Retirement on grounds of physical unfitness.**—(1) Where an officer not below the rank of a Deputy Inspector-General considers that an officer of the Force is unfit to perform his duties because of his physical conditions, the officer shall be brought before a medical board.

(2) The medical board consist of such officers and shall be constituted in such manner as may, from time to time, be laid down by the Director-General.

(3) Where the medical board considers the officer to be unfit for service, the Central Government shall communicate to the said officer the findings of the medical board and thereupon, within a period of fifteen days of such communication, the officer may make a representation against it to the Central Government.

(4) The Central Government may, on receiving the representation from the officer, refer the case to be reviewed by a fresh medical board constituted for the purpose and order the retirement of the said officer if the decision of the fresh medical board is adverse to him.

19. **Resignation.**—(1) The Central Government may, having regard to the special circumstances of any case, permit any officer of the Force to resign from the Force before the attainment of the age of retirement or before putting in such number of years of service as may be necessary under the rules to be eligible for retirement:

Provided that while granting such permission the Central Government may:

(i) require the officer to refund to the Government such amount as would constitute the cost of training given to that officer; or

(ii) make such reduction in the pension or other retirement benefits of the officer if so eligible as that Government may consider to be just and proper in the circumstances.

(2) The Central Government may accept the resignation under sub-rule (1) with effect from such date as it may consider experient:

Provided that it shall not be later than three months from the date of receipt of such resignation.

(3) The Central Government may refuse to permit an officer to resign:

(a) if an emergency has been declared in the Country either due to internal disturbances or external aggression; or

(b) if it considers it to be inexpedient so to do in the interests of the discipline of the Force; or

(c) if the officer has specifically undertaken to serve and such period has not expired.

(4) The provisions of this rule shall apply to and in relation to Subordinate Officers and Enrolled Persons as they apply to and in relation to any officer of the Force and the powers vested in the Central Government under sub-rules (1) and (2) shall be exercised in the case of a Subordinate Officer by a Deputy Inspector General and in the case of an Enrolled Person by a Commandant.

20. **Termination of service for misconduct.**—(1) Where in the opinion of the Director General a person subject to the Act has conducted himself in such manner, whether or not such conduct amounts to an offence, as would render his retention in service undesirable and his trial by Security Force Court inexpedient, the Director-General may inform the person concerned accordingly.

(2) The Director General shall further inform the person concerned that it is proposed to terminate his services either by way of dismissal or removal.

(3) The Director-General shall furnish the particulars of allegations and the report of investigation (including the statement of witnesses, if any, recorded and copies of documents, if any, intended to be used against him) in cases where allegations have been investigated:

Provided that where the allegations have not been investigated, the Director-General shall furnish to the person concerned the names of itnesses with a brief summary of the evidence and copies of documents, if any, in support of the allegations.

(4) Notwithstanding the provisions of sub-rule (3) where it would not be in public interest to disclose the evidence or the documents, it shall be lawful for the Director-General to withhold copies of such evidence or documents from the person concerned.

(5) Where any evidence or document is withheld under sub-rule (4), the Director-General shall record the nature of the evidence or the document withheld and forward the same to the Central Government together with the reasons for withholding such evidence or document.

(6) The person concerned shall within seven days from the receipt of information furnished to him under subrule (3) inform, in writing, the Director-General:—

(a) his acceptance or denial of the allegations;

(b) any material or evidence he wishes to be considered in his defence;

(c) names of witnesses whom he wishes to cross examine; and

(d) names of witnesses whom he wishes to examine in his defence.

(7) Where the person concerned has expressed a wish to cross-examine any witness or to produce witnesses in defence, the Director-General shall appoint an enquiry officer who shall be an officer superior to the person against whom it is proposed to take action and has not taken any part previously in the investigation into the matter.

(8) Where any complaint has been received by the Central Government against a person subject to the Act that he has conducted himself in such manner as would render his retention in service undesirable, the Central Government may require the Director-General to take necessary action in this behalf in accordance with the provisions of the foregoing sub-rules.

21. **Procedure before the Enquiry Officer.**—(1) The Director-General may appoint an officer of the Force to be the conducting officer for the purposes of presenting the case before the enquiry officer and it shall be the duty of the conducting officer to procure the attendance of witnesses.

(2) No counset of legal practitioner shall be allowed to appear before the enquiry officer.

(3) The evidence of witnesses shall be taken on oath and the conducting officer shall have the right to cross-examine or re-examine witnesses and to call witnesses in rebuttal.

(4) The enquiry officer shall ordinarily examine only such witnesses whose names have been disclosed under clauses (c) and (d) of sub-rule 6 of rule 20, but if the interests of justice so require, the enquiry officer may permit the person whose conduct is under enquiry, to call additional witnesses:

Provided that, if the enquiry officer considers that the evidence likely to be given by a witness would not materially assist in the determination of the issues, he may refuse to examine such a witness.

(5) The enquiry officer shall sit from day to day till the whole evidence has been recorded:

Provided that, if the interests of justice so require he may, for reasons to be recorded in writing adjourn for a reasonable time.

(6) (a) The enquiry officer shall, immediately after the termination of the enquiry, transmit his finding alongwith the evidence recorded, to the Deputy Inspector General under whom the person whose conduct is under enquiry was serving at the time of the alleged misconduct.

(b) The Deputy Inspector General shall forward the proceedings together with his opinion thereon to the Inspector General concerned who may record his opinion and transmit the proceedings to the Director General.

(7) The decision of the enquiry officer as to the admissibility of evidence, allowing or disallowing any question, calling or refusing to call any witness, adjourning or refusing to adjourn or on any other incidental question shall be final.

22. **Imposition of penalty.**—(1) After going through the allegations against the person intended to be dismissed or removed, his defence, and the proceedings of enquiry if any, the Director General shall, if the case has been initiated by the Central Government, and, may, in other cases, make his recommendation to the Central Government and that Government may dismiss or remove such a person.

(2) If the Central Government considers that the allegations are proved but dismissal or removal would be too severe a punishment, it may order:

(i) the retirement of the officer, or;

(ii) imposition of the penalty of forfeiture of service for purposes of promotion or seniority or;

(iii) may order the withholding of increments or any other punishment which would be sufficient to meet the ends of justice.

(3) The Director General, an Inspector General or a Deputy Inspector General, before dismissing or removing from the service a person subject to the Act shall comply, as far as applicable, with the provisions of rules 20, 21 and sub-rule (2) of this rule:

Provided that a Deputy Inspector General shall not dismiss or remove a subordinate officer of the rank of Subedar (Inspector).

23. **Dismissal or removal by Central Government.**—Where the Central Government is satisfied, for reasons to be recorded in writing, that:—

(i) it is not reasonably practicable to follow the procedure laid down in the said rules, or

(ii) it is not expedient, in the interests of the security of the State, to follow such procedure, it may order the dismissal or removal from the Force of a person subject to the Act without following the procedure laid down in rules 20 and 21.

24. **Retirement of subordinate officers and enrolled persons.**—A subordinate officer or an enrolled person shall on the fulfilment of the terms and conditions of service under which he was appointed or enrolled be eligible to retire.

25. **Retirement of subordinate officers and enrolled persons on grounds of physical unfitness.**—(1) Where a Commandant is satisfied that a Subedar, a Sub-Inspector or an enrolled person is unable to perform his duties by reason of any physical disability, he may direct that the said Subedar, Sub-Inspector or the enrolled person, as the case may be, to be brought before a Medical Board.

(2) The Medical Board shall be constituted in such manner as may be determined by the Director General.

(3) Where the said Subedar, Sub-Inspector or enrolled person is found by the Medical Board to be unfit for further service in the Force, as the case may be, the Commandant may, if he agrees with the finding of the Medical Board order the retirement of the Subedar, the Sub-Inspector, or as the case may be, the enrolled persons:

Provided that before the said Subedar or Sub-Inspector or as the case may be, the enrolled person is so retired the finding of the Medical Board and the decision to retire him shall be communicated to him.

(4) The subedar, the Sub-Inspector or, as the case may be, the enrolled person may, within a period of fifteen days from the date of receipt of such communication, make a representation to the officer next superior in command to the one who ordered the retirement.

(5) The said superior officer shall have the case referred to a Review Medical Board which shall be constituted in such manner as may be determined by the Director General.

(6) The superior officer may, having regard to the finding of the Review Medical Board, pass such order as he may deem fit.

(7) Where a representation has been made to a superior officer under sub-rule (4), an order passed under sub-rule (3), shall not take effect till it is confirmed by such superior officer.

26. **Retirement of enrolled persons on grounds of unsuitability.**—Where a Commandant is satisfied that an enrolled person is unsuitable to be retained in the Force the Commandant may, after giving such enrolled person an opportunity of showing cause (except where he considers it to be impracticable to give such opportunity), retire from the Force the said enrolled person.

27. **Retirement of subordinate officers on grounds of unsuitability.**—(1) Where a Commandant is satisfied that a Subedar or a Sub-Inspector is unsuitable to be retained in the Force, he may make a recommendation for the retirement of such Subedar or Sub-Inspector.

(2) Thereupon the Inspector General or, as the case may be, the Deputy Inspector General may, after giving such Subedar or Sub-Inspector an opportunity of showing cause (except when he considers it to be impracticable to give such opportunity), retire the said Subedar or Sub-Inspector from the Force.

28. **Powers to be exercised by a superior officer or authority.**—Any power conferred by the provisions of this Chapter on an officer may also be exercised by an officer or authority superior in command to the first mentioned officer.

29. **Passing of orders relating to absence from duty.**—Where an order of dismissal or of removal or of retirement of a person subject to the Act is set aside, the office or authority setting aside such dismissal, removal or retirement shall pass such orders as may be necessary in respect of the period of absence from duty of the person whose dismissal, removal or retirement has been set aside.

30. **Date of dismissal, removal, resignation, retirement.**—The effective date of dismissal, resignation or retirement shall be:—

(a) the date mentioned in the order of dismissal or removal or order sanctioning or accepting resignation or retirement or,

(b) if no such date is mentioned the date on which the order was signed or the date on which the person concerned is relieved from duties, whichever is later.

CHAPTER V

Arrest and Investigation

31. **Forms of arrest.**—(1) Arrest may be either open arrest or close arrest.

(2) An arrest, unless otherwise specified shall mean an open arrest.

(3) An order imposing arrest may be communicated to the person to be arrested either orally or in writing.

32. **Authority to order arrest.**—(1) No person subject to this Act shall be arrested on a charge under the Act except under and in accordance with the orders of a superior officer having power of command over him.

(2) Notwithstanding anything contained in sub-rule (1) any person subject to the Act may be placed under arrest by any superior officer:—

(a) if he commits an offence against such superior officer, or

(b) if he commits an offence in the view of such superior officer, or

(c) if he is behaving in a disorderly manner and the said superior officer considers it necessary to place such a person under arrest with a view to stop such disordely behaviour.

(3) A superior officer effecting arrest under sub-rule (2) shall as soon as possible, and in any case within twenty four hours of such arrest send a report to the Commandant of the battalion or unit of which the person arrested is a member and in case of the arrest of an officer of and above the rank of Commandant, to his immediate superior officer.

33. **Arrest how imposed**—(A) *Close arrest.*—(1) (a) Close arrest in the case of enrolled persons shall be imposed by informing the person to be arrested and ordering him to be marched to the place of confinement under an escort of persons of similar or superior rank.

(b) Where no such escort is available the person arrested shall be ordered to report himself immediately to the quarter guard or other place of confinement.

(2) (a) Close arrest in the case of officers, subordinate officers and under officers, shall be imposed by placing such officer, subordinate officer or under officer under the custody of another person of similar or superior rank and wherever considered necessary such officer, subordinate officer, or under officer may be confined under charge of a guard.

(b) The person under arrest shall not leave his quarter or tent without permission of a superior officer designated by the Commandant in this behalf.

(B) *Open arrest.*—(3) (a) Open arrest shall be imposed by informing the person to be arrested (whether he is an officer, subordinate officer, under officer or an enrolled person) that he is under open arrest and that he shall confine himself within such limits as may be specified in this behalf by the concerned superior officer effecting such arrest.

(b) The Commandant may, from time to time, vary the limits referred to in clause (a) above.

34. **Release from arrest during investigation.**—(1) Any person arrested under rule 33 may be released from arrest under the order of an Assistant Commandant, Deputy Commandant, Commandant or any officer superior to the Commandant.

(2) Subject to the provisions of rule 35, no person except on the basis of any fresh evidence against him be re-arrested.

35. **Release without prejudice to re-arrest.**—Pending the completion of the investigation or convening of a Court any person who has been placed under arrest may without prejudice to re-arrest be released by his Commandant or by any officer superior to his Commandant.

36. **Arrest when to be imposed.**—(1) Any person charged with:

(i) an offence under section 14, or clause (a) or clause (b) of section 16, or section 17 or section 20 or sub-section (1) of section 21.

(ii) a civil offence punishable with death or imprisonment for life.

(iii) any other offence under the Act:—

(a) if the interest of discipline so require, or

(b) if the person concerned deliberately undermines discipline, or,

(c) if the person concerned is of violent disposition, or,

(d) if the person concerned is likely to absent himself with a view to avoid trial, or,

(e) if the person concerned is likely to interfere with witnesses or tamper with evidence,

shall be placed under arrest.

(2) Where any person arrested shows symptoms of sickness, medical assistance shall be provided for such person.

37. **Special provision in case of arrest of intoxicated person.**—(1) Where an intoxicated person has been arrested, he shall, as far as possible, be confined separately and shall be visited by orderly officer or orderly subordinate officer or oderly under officer or under officer incharge of the guard, once every two hours.

(2) An intoxicated person shall not be taken before a superior officer for investigation of his case until he has become sober.

38. **Arrest in case of persons whose trial has been ordered.**—(1) Unless the convening officer has otherwise directed, on the commencement of the trial of a person by the Court, the said person shall be placed under arrest and shall remain under arrest during the trial.

(2) Where a sentence lower than imprisonment is passed by a Court the arrested person shall be released by his Commandant pending confirmation of the finding and sentence:

Provided that a person who has been sentenced to be dismissed shall not, except while on active duty, be put on any duty.

39. **Delay reports.**—(1)(a) The report on reasons for delay as required under section 59 shall be in the form set out in Appendix II and it shall be sent by the Commandant to the Deputy Inspector General under whom the accused may be serving.

(b) A copy of the eighth delay report and every succeeding report thereof shall also be sent to the Inspector General under whom the accused may be serving.

(2) Where the accused is kept under arrest for a period exceeding three months without being brought to trial, a special report regarding the action taken and the reasons for the delay shall be sent by the Commandant to the Director General with a copy each to the Deputy Inspector General and the Inspector General concerned.

40. **Rights of a person under arrest.**—(1)(a) Any person placed under arrest shall, at the time of being placed under arrest, be given in writing by the officer effecting the arrest the particulars of the charges against him.

(b) The said particulars shall be rendered in simple langage and also explained to the accused.

(c) Notwithstanding anything contained in clause (a), where during the investigation other offences committed by the accused are discovered, it shall be lawful to charge such person with those offences.

(2) (a) The orderly officer or the orderly subordinate officer shall every day make a visit to the person under arrest and take the orders of the Commandant on any request or representation made by the person under arrest.

(b) The request or representation made by the person under arrest shall be entered in the form set out in Appendix III.

CHAPTER VI

Choice of Jurisdiction between Security Force Court and Criminal Court

41. **Trial of cases either by security force court or criminal court.**—(1) Where an offence is triable both by a criminal court and a Security Force Court, an officer referred to in section 80 may,—

(i) (a) Where the offence is committed by the accused in the course of the performance of his duty as a member of the Force, or

(b) where the offence is committed in relation to property belonging to the Government or the Force or a person subject to the Act, or

(c) where the offence is committed against a person subject to the Act,

direct that any person subject to the Act, who is alleged to have committed such an offence, be tried by a Court; and

(ii) in any other case, decide whether or not it would be necessary in the interests of discipline to claim for trial by a Court any person subject to the Act who is alleged to have committed such an offence.

(2) In taking a decision to claim an offender for trial by a Court, an officer referred to in section 80 may take into account all or any of the following factors, namely:

(a) the offender is on active duty or has been warned for active duty and it is felt that he is trying to avoid such duty;

(b) the offender is a young person undergoing training and the offence is not a serious one and the trial of the offender by a criminal court would materially affect his training;

(c) the offender can, in view of the nature of the case, be dealt with summarily under the Act.

42. **Cases not to be tried by Security Force Court.**—Without prejudice to the provisions of sub-rule (1) of rule 41, an offender may not be claimed for trial by a Security Force Court:—

(a) where the offence is committed by him along with any other person not subject to the Act whose identity is known; or

(b) where the offence is committed by him while on leave or during absence without leave."

CHAPTER VII

Investigation and Summary Disposal

43. **Offence report.**—Where it is alleged that a person subject to the Act, has committed an offence punishable thereunder the allegation shall be reduced to writing in the form set at in Appendix IV.

44. **Hearing by the Company Commander or equivalent.**—(1) (a) In the case of a person, subject to the Act, other than an officer, the case shall, in the first instance, be heard by his Company Commander.

(b) The witnesses shall give evidence in presence of the accused who shall have the right to cross-examine them.

(c) The accused shall have the right to call witnesses in defence and to make a statement.

(2) After hearing the charge under sub-rule (1), the Company Commander may:—

(i) award any punishment which he is empowered to award, or

(ii) dismiss the charge when the charge is not proved, or

(iii) refer the case to the Commandant:

Provided that he shall not dismiss the charge or award a punishment:—

(a) if the case has been reserved by the Commandant for disposal by himself; or

(b) if the accused is under close arrest.

45. **Hearing by the Commandant.**—The Commandant shall hear the charge under sub-rule (1) of rule 44 and may:—

(i) award any of the punishments which he is empowered to award, or

(ii) dismiss the charge, or

(iii) remand the accused, for preparing a record of evidence or for preparation of an abstract of evidence against him, or

(iv) remand him for trial by a Summary Security Force Court:

Provided that, in cases where the Commandant awards more than 7 days imprisonment or detention he shall record the substance of evidence and the defence of the accused:

Provided further that, he shall dismiss the charge if in his opinion the charge is not proved or may dismiss it if he considers that because of the previous character of the accused and the nature of the charge against him it is not advisable to proceed further with it:

Provided also that, in case of all offences punishable with death a record of evidence shall be taken.

46. **Attachment to another unit.**—The Commandant shall not deal with any case:—

(i) where the offence with which the accused is charged is against the Commandant himself, or

(ii) where the Commandant is himself a witness in the case against the accused, or

(iii) where the Commandant is otherwise personally interested in the case,

and the accused shall be attached to another battalion or unit for disposal of the case under the order of the Deputy Inspector General:

Provided that a Commandant shall not be disqualified from hearing a charge merely because the offence was committed against the property of a Force Mess, band or institution of which the Commandant is a member or trustee or because the offence is one of disobedience of such Commandant's orders.

47. **Charges not to be dealt with summarily.**—A charge for an offence under section 14 or section 15 or clauses (a) and (b) of section 16 or section 17 or clause (a) of section 18 or clause (a) of section 20 or clause (a) of section 24 or section 46 (other than that for simple hurt or theft) or a charge for abetment of or an attempt to commit any of these offences shall not be dealt with summarily.

48. **Record of evidence.**—(1) The Commandant may either prepare the record of evidence himself or detail another officer to do so.

(2) The witnesses shall give their evidence in the presence of the accused and the accused shall have right to cross-examine all witnesses who give evidence against him.

(3) After all the witnesses against the accused have been examined, he shall be cautioned in the following terms; "You may make a statement if you wish to do so, you are not bound to make one and whatever you state shall be taken down in writing and may be used in evidence". After having been cautioned in the aforesaid manner whatever the accused states shall be taken down in writing.

(4) The accused may call witnesses in defence and the officer recording the evidence may ask any question that may be necessary to clarify the evidence given by such witnesses.

(5) All witnesses shall give evidence on oath or affirmation:

Provided that, no oath or affirmation shall be given to the accused nor shall he be cross-examined.

(6) (a) The statements given by witnesses shall ordinarily be recorded in narrative form and the office recording the evidence may, at the request of the accused, permit any portion of the evidence to be recorded in the form of question and answer.

(b) The witnesses shall sign their statements after the same have been read over and explained to them.

(7) Where a witness cannot be compelled to attend or is not available or his attendance cannot be procured without an undue expenditure of time or money and after the officer recording the evidence has given a certificate in this behalf, a written statement signed by such witness may be read to the accused and included in the record of evidence.

(8) After the recording of evidence is completed the officer recording the evidence shall give a certificate in the following form:—

"Certified that the record of evidence ordered by ..... Commandant ..... was made in the presence and hearing of the accused and the provisions of rule 48 have been complied with".

49. **Abstract of evidence.**—(1) An abstract of evidence shall be prepared either by the Commandant or an officer detailed by him.

(2) (a) The abstract of evidence, shall include;

(i) signed statements of witnesses wherever available or a precis thereof, or

(ii) copies of all documents intended to be produced at the trial.

(b) Where signed statements of any witnesses are not available a precis of their evidence shall be included.

(3) A copy of the abstract of evidence shall be given by the officer making the same to the accused and the accused shall be given an opportunity to make a statement if he so desires after he has been cautioned in the manner laid down in sub-rule (3) of rule 48:

Provided that the accused shall be given such time as may be reasonable in the circumstances but in no case less than twenty four hours after receiving the abstract of evidence to make his statement.

50. **Investigation of cases by Police.**—Where the Commandant considers it necessary so to do, he may lodge a report with the Police for investigation of any case.

51. **Disposal of case by Commandant after record or abstract of evidence.**—(1) Where an officer has been detailed to prepare the record of evidence or to make an abstract thereof he shall forward the same to the Commandant.

(2) The Commandant may, after going through the record or abstract of evidence:—

(i) dismiss the charge, or

(ii) rehear the charge and award one of the summary punishments, or

(iii) try the accused by a Summary Security Force Court where he is empowered so to do, or

(iv) apply to a competent officer or authority to convene a Court for the trial of the accused.

52. **Application for a Court.**—An application for a Court shall be made by the Commandant in the form set out in Appendix V to these rules and shall be accompanied by five copies of the record or abstract of evidence and charge sheet and such other documents as are mentioned in that application form.

CHAPTER VIII

On Charges and Matters Antecedent to Trial

53. **Charge sheet.**—(1) A charge sheet shall contain the whole of the issue or issues to be tried at one time and may contain more than one charge, if the

charges are founded on the same facts or form part of a series of offences of same or similar character:

Provided that a charge under section 18, section 19 section 29 and section 32 may be included in any charge sheet, notwithstanding that other charges in that charge sheet are not founded on the same facts or do not form part of a series of offences of the same or similar character.

(2) Every charge sheet shall in its lay out follow the appropriate specimen set out in Appendix VI to these rules.

54. **Charges.**—(1) There shall be a separate charge for each offence.

(2) (a) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once or he may be charged in the alternative with having committed some one of the said offences.

(b) The charge for the more serious offence shall precede the one for the less serious offence.

(3) Each charge shall consist of two parts, namely:

(a) statement of the offence, and

(b) particulars of the offence.

(4) The offence shall be stated, if not a civil offence, as nearly as practicable, in the words of the Act, and if a civil offence, in such words as would sufficiently describe that offence.

(5) (a) The particulars shall state the time and place of the alleged offence and the person (if any) against whom, or the thing (if any) in respect of which, it was committed and these should be sufficient to give the accused notice of the matter with which he is charged.

(b) In case such particulars are not sufficient to give the accused notice of the matter with which he is charged the charge shall also contain such particulars of the manner in which the offence was committed as will be sufficient for that purpose.

55. **Joint charges.**—(1) Any number of accused may be charged jointly and tried together for an offence averred to have been committed jointly by them.

(2) Any number of accused though not charged jointly may also be tried together for an offence averred to have been committed by one or more of them and abetted by other or others.

(3) Where the accused are so charged under sub-rule (1) or sub-rule (2), any one or more of them may be charged with, and tried for, any other offence with which they could have been charged under sub-rule (1) of rule 53.

56. **Validity of charge sheet.**—A charge sheet shall not be invalid merely by reason of the fact that it contains any mistake in the name or description of the accused, and in the construction of a charge sheet there shall be presumed in favour of supporting it every proposition which may reasonably be presumed to be impliedly included, though not expressed therein, and the statement of the offence and the particulars of the offence shall be read and construed together.

57. **Amendment of the charge by the Security Force Court.**—(1) At any time during a trial, if it appears to the Court that there is in the charge sheet;

(a) a mistake in the name or description of the accused, or

(b) a mistake which is attributable to a clerical error or omission,

the Court may amend the charge-sheet so as to correct the mistake.

(2) If at any time during a trial, at which there is a Law Officer, it appears to the Court, before it closes to deliberate on its findings, that it is desirable in the interests of justice to make any addition to, omission from or alteration in, a charge which cannot be made under sub-rule (1) of this rule it may, if such addition, omission, or alteration can be made without unfairness to the accused, and with the concurrence of the Law Officer, so amend the charge.

(3) If at any time during a trial, at which there is no Law Officer, it appears to the Court, before it closes to deliberate on its finding, that in the interests of

justice it is desirable to make any addition to, omission from or alteration in a charge which cannot be made under sub-rule (1) of this rule, it may adjourn and report its opinion to the convening officer, who may:—

(a) amend the charge if permissible under rule 56 and direct the Court to try it as amended after due notice of the amendment has been given to the accused; or

(b) direct the Court to proceed with the trial of the charge without amending it; or

(c) convene a fresh Court to try the accused.

58. Amendment of Charge by Convening Officer.—When a Security Force Court reports to the convening officer under either rule 57 or rule 73 he may amend the charge in respect of which the Court has reported to him by making any addition to, omission from or alteration in the charge which, in his opinion, is desirable in the interests of justice and which he is satisfied can be made without unfairness to the accused.

Convening of security force court

59. Action by a Superior Authority on receiving an application for convening a court.—(1) As soon as a superior officer receives an application for convening a Court, he shall scrutinise the charge and the evidence against the accused, where necessary in consultation with the Chief Law Officer or a Law Officer and he;

(i) shall direct the Commandant to dismiss the charge where the evidence against the accused is insufficient and further evidence is not likely to be available and may direct him to do so if he considers it inadvisable to proceed with the trial; or,

(ii) may return the case to the Commandant for being tried by a Summary Security Force Court or being dealt with summarily if he considers that the same can be adequately so tried or dealt with, or

(iii) may return the case for recording further evidence, if he considers the evidence recorded insufficient but considers that further evidence may be available.

(2) (a) In any other case he may either himself convence a Court or if he considers that a higher type of Court should be convened and he is not empowered to convene such a Court, forward the case to a higher authority with recommendation that such Court may be convened.

(b) The higher authority on receiving the case may exercise any of the powers given in sub-rule (1) of this rule:

Provided that a superior officer or higher authority before convening a General Security Force Court or a Petty Security Force Court for the trial of a civil offence or an offence under any of the Sections 24, 30 and 31 shall take the advice of the Chief Law Officer or a Law Officer:

Provided further that the superior authority or higher authority while convening a Court may reframe the charge sheet on which the accused is to be tried.

60. Disqualification of Officers for serving on Security Force Court.—An officer shall be disqualified from serving on a Court if he:—

(i) is an officer who convened the Court; or

(ii) is the prosecutor or a witness for the prosecution; or,

(iii) has taken any part in the investigation of the case, which would have necessitated his applying his mind to any part of the evidence, or to the facts of the case, or

(iv) is the Commandant of the accused, or

(v) has a personal interest in the case.

61. Composition of Court.—(1) A Court shall consist, as far as practicable, of officers of different battalions.

(2) The members of a Court for the trial of an officer shall be of a rank not lower than the rank of that officer, unless in the opinion of the convening officer,

officers of such rank are not, having due regard to the exigencies of public service, available. Such opinion shall be recorded in the convening order.

(3) A Court for the trial of a Commandant, shall as far as possible, consist of officers who are or have been Commandants or who hold, or have held, a higher appointment.

62. Duties of convening officer when convening courts.—When an officer convenes a Court he shall:

(a) issue a convening order in the appropriate form set out in Appendix VII;

(b) direct upon what charges the accused is to be tried and ensure that the accused has been remanded for trial by a Court upon these charges, by his Commandant;

(c) if he is of the opinion that charges shall be put in separate charge sheets, so direct and shall also direct the order in which they are to be tried;

(d) direct, if there is more than one accused whether the accused are to be tried jointly or separately;

(e) appoint members of the Court and any waiting members;

(f) if convening:

(i) a General Security Force Court; or

(ii) a Petty Security Force Court which he considers should be attended by a Law Officer, take the necessary steps to procure the appointment of a Law Officer by or on behalf of the Chief Law Officer;

(g) appoint an officer, subject to the Act or a counsel assisted by such an officer to prosecute or detail a Commandant to appoint an officer subject to the Act, to prosecute:

Provided that the convening officer may appoint more than one such officer to prosecute if he thinks fit;

(h) appoint an interpreter wherever necessary;

(i) send to the senior member the charge sheet, the convening order and a copy of the record or abstract of evidence from which any evidence which in his opinion would be inadmissible at the trial has been expurgated;

(j) forward to each member of the Court and to each waiting member a copy of the charge-sheet;

(k) forward to the prosecutor copies of the charge sheet and convening order and the original record or abstract of evidence together with an unexpurgated copy thereof showing the passages (if any) which have been expurgated in the copy sent to the senior member;

(l) forward to the Law Officer (if any) copies of the charge sheet and convening order and an unexpurgated copy of the record or abstract of evidence showing the passages (if any) which have been expurgated in the copy sent to the senior member;

(m) ensure that the Commandant has summoned all the prosecution witnesses and such defence witnesses as the accused may have requested to be summoned under rule 64.

63. Preparation of defence by the accused.—(1) An accused, who has been remanded for trial, shall be afforded proper opportunity for preparing his defence and shall be allowed proper communication with his defending officer or counsel and with his witnesses.

(2) A defending officer shall be appointed to defend an accused who has been remanded for trial unless the accused states in writing that he does not wish such an appointment to be made.

(3) If the prosecution is to be undertaken by a legally qualified officer or by a counsel the accused shall be notified of this fact in sufficient time to enable him,

if he so desires to make arrangements for a legally qualified officer or counsel to defend him.

(4) As soon as practicable after a decision has been taken to place the accused on trial and in any case not less than four days before his trial he shall be given;

(a) a copy of the charge-sheet;

(b) an unexpurgated copy of the record or abstract of evidence showing the passages (if any), which have been expurgated in the copy sent to the senior member;

(c) notice of any additional evidence which the prosecution intends to adduce; and

(d) if the accused so requires, a list of the ranks, names, and units of the members who are to form the Court and of any waiting members.

(5) When an accused is given a copy of the charge-sheet and of the record or abstract of evidence in accordance with this rule, he shall:

(a) have the charge explained to him; and

(b) be informed that, upon his making a written request to his Commandant not less than twenty four hours before his trial requiring the attendance at his trial of a witness (other than a witness for the prosecution) whom he desires to call in his defence (such witness to be named by him), reasonable steps will be taken in accordance with these rules to procure the attendance of any such witness at his trial.

(6) The provisions of sub-rules (2) and (3) shall not apply in relation to a trial before a Summary Security Force Court and in relation to such a trial the period of four days referred to in sub-rule (4) shall be construed as twenty four hours.

Summoning of defence witnesses

64. (1) Subject to the provisions of sub-rules (2) and (3) the Commandant shall, on a request made in this behalf by the accused, summon such witnesses as are specified by the accused.

(2) Where the Commandant is satisfied that the evidence to be given by any witness is not likely to be of material assistance at the trial he may refuse to summon such witness.

(3) The Commandant may before summoning any witness, require the accused to defray or undertake to defray the cost of attendance of such witness and if the accused refuses to defray or undertake to defray the cost aforesaid, the Commandant may refuse to procure the attendance of that witness.

(4) Where the Commandant has refused to summon the witness under sub-rule (2) or sub-rule (3) the accused may make an application to the Court for the summoning of such witness and the Court may, if it considers it to be expedient in the interests of justice, order the summoning of such witness and, if necessary, adjourn the proceedings for the attendance of such witness.

CHAPTER IX

Procedure for security force courts

65. **Assembly and swearing of court.**—(1) Upon a Security Force Court assembling the Court shall, before beginning the trial, satisfy itself in closed Court:—

(a) that the Court has been convened in accordance with the Act and these rules;

(b) that the Court consists of not less than the minimum number of officers required by law;

(c) that the members are of the required rank;

(d) that members have been duly appointed and are not disqualified under the Act;

(e) that if there is a Law Officer he has been duly appointed;

(f) that the accused appears from the charge-sheet, to be subject to the Act and to be subject to the jurisdiction of the Court; and

(g) that each charge is correct in law and framed in accordance with these rules;

(2) (a) Where a vacancy occurs through a member of the Court being disqualified under the Act or being absent when the Court assembles, the presiding officer may appoint a duly qualified waiting member to fill that vacancy.

(b) The presiding Officer may if the interests of justice so require, substitute a duly qualified waiting member for a member appointed by the convening officer.

(3) If the Court is not satisfied on any of the matters mentioned in sub-rule (1) and is not competent to rectify such matter itself under the Act or these rules, it shall before commencing the trial, report thereon to the convening officer.

(4) When the Court has complied with this rule and is ready to proceed with the trial, the presiding officer shall open the Court and the trial shall begin.

66. **Commencement of Trial.**—(1) The order convening the Court and the names of the officers appointed to try the accused shall be read in the hearing of the accused who shall be given an opportunity to object to any of those officers in accordance with section 84 of the Act.

(2) When a Court is to try more than one accused whether separately or jointly, each accused shall be given an opportunity to object to any officer on the Court in accordance with the foregoing sub-rule and shall be asked separately whether he has any such objection.

(3) An accused shall state the names of all the officers to whom he objects before any objection is disposed of.

(4) If more than one officer is objected to; the objection to each officer shall be disposed of separately and the objection to the lowest in rank shall be disposed of first.

(5) An accused may make a statement and call any person to make a statement in support of his objection.

(6) An officer to whom the accused has objected may state in open Court anything relevant to the objection of the accused whether in support or in rebuttal thereof.

(7) An objection to an officer shall be considered in closed Court by all the other officers on the Court and the officer objected to shall not be present at that time.

(8) When an objection to an officer is allowed under sub-section (3) of section 84 that officer shall forthwith retire and take no further part in the proceedings.

(9) When an officer objected to retires and there is duly qualified waiting member in attendance, the presiding officer shall immediately appoint him to take the place of the officer who has retired.

(10) The Court shall satisfy itself that a waiting member who takes the place of a member of the Court is of the required rank and not disqualified under the Act and shall give the accused an opportunity to object to him and shall deal with any such objection in accordance with the Act and these rules.

(11) If as the result of the allowance of an objection to a member there are insufficient officers available to form a Court in compliance with the Act the Court shall report to the convening officer without proceeding further with the trial and convening officer may either appoint an officer as a member to fill the vacancy or convene a fresh Court to try the accused.

67. *Swearing or affirming of members.*—As soon as the Court is constituted with the proper number of officers who are not objected to or objections in respect of whom have been overruled an oath or affirmation shall be administered to every member in presence of the accused in one of the following forms or in such other form to the same purport as the Court ascertains to be according to his religion or otherwise binding on his conscience.

FORM OF OATH

"I, ... swear by Almighty God, that I will, well and truly, try the accused (or accused persons), before the Court, according to the evidence, and that I will, duly administer justice, according to the Border Security Force Act, 1968, without partiality, favour or affection; and I do further swear that I will not, on any account, at any time, whatsoever, disclose or discover, the vote or opinion of any particular member of the Court unless required to give evidence thereof by a court of law".

FORM OF AFFIRMATION

"I, ... do solemnly, sincerely and truly, declare and affirm, that I will well and truly, try the accused (or accused persons), before the Court, according to the evidence, and that I will, duly administer justice according to the Border Security Force Act 1968 without partiality, favour or affection; and I do further solemnly, sincerely and truly declare and affirm that I will not, on any account at any time whatsoever, disclose or discover, the vote or opinion of any particular member of this Court unless required to give evidence thereof by a Court of Law".

68. **Swearing or affirmation of Law Officer and other officers.**—After the members of the Court are all sworn or have made affirmation, an oath or affirmation shall be administered to the following persons or such of them as are present at the Court in such of the following forms as shall be appropriate, or in such other form to the same purport as the Court ascertains to be according to the religion or otherwise binding on the conscience of the person to be sworn or affirmed.

LAW OFFICER

FORM OF OATH

I, ... swear by Almighty God that I will, to the best of my ability, carry out the duties of Law Officer, in accordance with the Border Security Force Act, 1968, and the rules made thereunder without partiality, favour or affection, and I do further swear that I will not, on any account at any time whatsoever, disclose or discover the vote or opinion on any matter of any particular member of this Court, unless required to give evidence thereof by a court of law.

FORM OF AFFIRMATION

I, ... do hereby, solemnly, sincerely and truly declare and affirm that I will, to the best of my ability, carry out the duties of Law Officer in accordance with the Border Security Force Act, 1968 and the rules made thereunder without partiality, favour or affection, and I do further solemnly, sincerely and truly declare and affirm, that I will not, on any account, at any time, whatsoever, disclose or discover the vote or opinion, on any matter, of any particular member of this Court, unless, required to give evidence thereof by a court of law.

(B) OFFICER ATTENDING FOR THE PURPOSE OF INSTRUCTION:

FORM OF OATH

I, ... swear by Almighty God that I will not on any account; at any time whatsoever disclose or discover the vote or opinion of any particular member of this Court unless required to give evidence thereof by a court of law.

FORM OF AFFIRMATION

I, ... do solemnly, sincerely and truly, declare and affirm that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this Court unless required to give evidence thereof by a court of law.

(C) SHORTHAND WRITER:

FORM OF OATH

I, ... swear by Almighty God that I will truly take down to the best of my power, the evidence to be given before this Court and such other matters as I may be required to take down and will, when required, deliver to the Court a true transcript of the same.

FORM OF AFFIRMATION

I, ... do solemnly, sincerely and truly, declare and affirm, that I will truly take down to the best of my power the evidence to be given before this Court and such other matters as I may be required to take down and will, when required, deliver to the Court a true transcript of the same.

(D) INTERPRETER

FORM OF OATH

"I, ... swear by Almighty God that I will faithfully, interpret and translate, as I shall be required to do, touching the matter before this Court."

FORM OF AFFIRMATION

I, ... do solemnly, sincerely and truly declare and affirm that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this Court.

69. **Objection to Interpreter or Shorthand Writer.**—A person shall not be sworn or affirmed as an interpreter or shorthand writer, if he is objected to by the accused unless the Court, after hearing the accused and the prosecutor, disallows such objection as being unreasonable.

70 **Objection to Law Officer and Prosecutor.**—The accused shall not be permitted to object to the Law Officer or the prosecutor.

71. **Arraignment.**—(1) When the Court and the Law Officer (if any) have been sworn, the charge shall be read to the accused and shall be asked whether he pleads guilty or not guilty to the charge or charges.

(2) If there is more than one charge, against the accused he shall be required to plead separately to each charge.

(3) If there is more than one charge-sheet, against the accused, before the Court, the Court shall proceed with the charges in the first of such charge-sheets and shall announce its finding thereon and if the accused has pleaded guilty, comply with rule 78, before it arraigns him upon the charges in any subsequent charge-sheet.

72. **Plea to Jurisdiction.**—(1) The accused, before pleading to the charge, may offer a plea regarding the jurisdiction of the Court; and in such a case—

(a) the accused may adduce evidence in support of the plea and the prosecutor may adduce evidence in answer thereto; and

(b) the prosecutor may address the Court in answer to the plea and the accused may reply to the prosecutor's address.

(2) If the Court allows the plea it shall adjourn and report to the convening officer.

(3) When the Court reports to the convening officer under this rule, the convening officer shall:—

(a) if he approves the decision of the Court to allow the plea, dissolve the Court;

(b) if he disapproves the decision of the Court;

either:—

(i) refer the matter back to the Court and direct them to proceed with the trial; or

(ii) convene a fresh Court to try the accused.

73. **Objection to the charge.**—(1) An accused before pleading to a charge may object to it on the grounds that it is not correct in law or is not framed in accordance with these rules and if he does so, the prosecutor may address the Court in answer to the objection and the accused may reply to the prosecutor's address.

(2) If the Court upholds the objection, it shall either amend the charge if permissible under rule 57 or adjourn and report to the convening officer;

Provided that if there is another charge or another charge sheet before the Court, the Court may, before, adjourning under this rule, proceed with the trial of such other charge or other charge-sheet.

(3) When the Court reports to the convening officer under this rule, the convening officer shall:—

(a) if he approves the decision of the Court to allow the objection:—

(i) dissolve the Court; or

(ii) where there is another charge or another charge-sheet before the Court to which the objection does not relate and which the Court has not tried, direct the Court to proceed with the trial of such other charge or charge-sheet only, or

(iii) amend the charge to which the objection relates if permissible under rule 58 and direct the Court to try it as amended,

(b) If he disapproves the decision of the Court to allow the objection:—

(i) direct the Court to try the charge, or

(ii) where there is another charge or another charge-sheet before the Court to which the objection does not relate and which the Court has not tried, direct the Court to proceed with the trial of such other charge or charge-sheet only, or

(iii) convene a fresh Court to try the accused.

74 **Plea in bar of trial.**—(1) An accused before pleading to a charge may offer a plea that the trial is barred under section 75 or section 76. If he does so:—

(a) the accused may adduce evidence in support of the plea and the prosecutor may adduce evidence in answer thereto, and

(b) the prosecutor may address the Court in answer to the plea and the accused may reply to the prosecutor's address.

(2) If the Court allows the plea it shall adjourn and report to the convening officer.

Provided that if there is another charge or another charge-sheet before the Court, the Court may, before adjourning under this rule, proceed with the trial of such other charge or other charge-sheet.

(3) When a Court reports to the convening officer under this rule, the convening officer shall:—

(a) if he approves the decision of the Court to allow the plea,

(i) dissolve the Court; or

(ii) where there is another charge or another charge-sheet before the Court to which the plea does not relate and which the Court has not tried, direct the Court to proceed with the trial of such other charge or charge-sheet only,

(b) if he disapproves the decision of the Court to allow the plea:—

(i) direct the Court to try the charge; or

(ii) where there is another charge or another charge-sheet before the Court to which the plea does not relate and which the Court has not tried direct the Court to proceed with the trial of such other charge or charge-sheet only; or

(iii) convene a fresh Court to try the accused.

75. **Application for separate trial.**—(1) Where two or more accused are charged jointly, any one of the accused may, before pleading to the charge, apply to the Court to be tried separately on the ground that he would be prejudiced in his defence if he were not tried separately.

(2) Where the accused makes such an application, the prosecutor may address the Court in answer thereto and the accused may reply to the prosecutor's address

(3) Where the Court is of the opinion that the interests of justice so require it shall allow the application and try separately the accused who made it.

76. **Application for trial on separate charge-sheet.**—(1) Where a charge-sheet contains more than one charge, the accused may, before pleading to the charges, apply to the Court to be tried separately on any charge in that charge-sheet on the ground that he would be prejudiced in his defence if he were not tried separately on that charge.

(2) Where the accused makes such an application, the prosecutor may address the Court in answer thereto and the accused may reply to the prosecutor's address.

(3) Where the Court is of the opinion that interests of justice so require it shall allow the application and try the accused separately on the charge to which it relates as if that charge had been inserted in a separate charge-sheet.

77. **Pleading to the charge.**—(1) After any plea under rules 72 and 74 any objection under rule 73 and any applications under rules 75 and 76 have been dealt with, the accused shall be required subject to sub-rule (2) to plead either guilty or not guilty to each charge on which he is arraigned.

(2) Where a Court is empowered by section 93 to find an accused guilty of an offence other than that charged or guilty of committing the offence in circumstances involving a less degree of punishment or where it could after hearing the evidence, make a special finding of guilty subject to exceptions or variations in accordance with rule 99 the accused may plead guilty to such other offence or to the offence charged as having been committed in circumstances involving a less degree of punishment or to the offence charged subject to such exceptions or variations.

78. **Acceptance of plea of guilty.**—(1) Where an accused pleads guilty to a charge under either sub-rule (1) or sub-rule (2) of rule 77, the presiding officer or Law Officer shall, before the Court decides to accept the plea, explain to the accused the nature of the charge and the general effect of his plea and in particular the difference in procedure when an accused pleads guilty and when an accused pleads not guilty.

(2) A Court shall not accept a plea of guilty under either sub-rule (1) or sub-rule (2) of rule 77, if,—

(a) the Court is not satisfied that the accused understands the nature of the charge or the effect of his plea; or

(b) the presiding officer having regard to all the circumstances, considers that the accused should plead not guilty; or

(c) the accused is liable, if convicted, to be sentenced to death;

(3) (a) In the case of a plea of guilty under rule 79, a Court shall not accept the plea unless the convening officer concurs and it is satisfied of the justice of such course.

(b) The concurrence of the convening officer may be signified by the prosecutor.

(4) When a plea of guilty under either sub-rule (1) or sub-rule (2) of rule 77 is not accepted by the Court or the accused either refuses to plead to the charge or does not plead to it intelligibly, the Court shall record a plea of not guilty.

(5) When a Court is satisfied that it can properly accept a plea of guilty under either sub-rule (1) or sub-rule (2) of rule 77, it shall record a finding of guilty in respect thereof.

79. **Plea on alternative charge.**—(1) When an accused pleads guilty to the first of two or more alternative charges, the Court, if it accepts the accused's plea of guilty, shall record a finding of guilty in respect of the first charge and the prosecutor shall withdraw any alternative charge before the accused is arraigned on it.

(2) When an accused pleads guilty to one of two or more charges which are laid in the alternative other than the first of such charges, the Court may—

(a) proceed as if the accused had pleaded not guilty to all the charges; or

(b) (i) With concurrence of the convening officer (which may be signified by the prosecutor) record a finding of guilty on the charge to which the accused has pleaded guilty and a finding of not guilty on any alternative charge which is placed before it in the charge-sheet.

(ii) Where the Court records such finding the prosecutor shall before the accused is arraigned on it withdraw any charge which is alternative to the charge of which the Court has found the accused guilty and which is placed after it in the charge-sheet.

80. **Order of trial where plea of guilty and not guilty.**—(1) After the Court has recorded a finding of guilty, if there is no other charge in the same charge sheet to which the accused has pleaded not guilty and no other accused who has pleaded not guilty to a charge in that charge-sheet, it shall proceed with the trial as directed by rule 81.

(2) Where there is another charge in the charge-sheet to which the accused has pleaded not guilty or there is another accused who has pleaded not guilty to a charge in that charge-sheet, the Court shall not comply with rule 81 until after it has dealt with such other charge or tried such other accused and has announced and recorded its finding in respect thereof.

81. **Procedure on plea of guilty.**—(1) When the Court has recorded a finding of guilty in respect of a charge to which an accused had pleaded guilty the prosecutor shall read the record or abstract of evidence to the Court or inform the Court of the facts contained therein:

Provided that if an expurgated copy of the record or abstract of evidence was sent to the presiding officer, the prosecutor shall not read to the Court those parts of the record or abstract of evidence which have been expurgated or inform the Court of the facts contained in those parts, and shall not hand the original record or abstract of evidence to the Court until the trial is concluded.

(2) Where there is no record or abstract of evidence the Court shall record in accordance with these rules sufficient evidence to enable it to determine the sentence.

(3) After sub-rules (1) and (2) have been complied with, the accused may,—

(a) adduce evidence of character and in mitigation of punishment;

(b) address the Court in mitigation of punishment.

(c) After sub-rule (3) has been complied with, the Court shall proceed as directed in rule 101.

82. **Change of plea.**—(1) An accused who has pleaded not guilty may at any time before the Court closes to deliberate on its finding withdraw his plea of not guilty and substitute a plea of guilty [including a plea of guilty under the (79)] and in such a case the Court shall, if it is satisfied that it can accept the accused's changed plea under these rules, record a finding in accordance with the accused's changed plea and so far as is necessary proceed as directed by rule 81.

(2) Where at any time during the trial it appears to the Court that an accused who has pleaded guilty does not understand the effect of his plea or the nature of the charge the Court shall enter a plea of not guilty and proceed with the trial accordingly.

(3) When the Court records a plea of not guilty in respect of any charge under sub-rule (2) it shall, if there was a charge laid in the alternative thereto which the prosecutor withdrew under rule 79 reinstate such alternative charge, arraign the accused thereon and proceed with the trial as if it had never been withdrawn.

83. **Procedure on pleas of not guilty** —After a plea of not guilty to any charge has been recorded:—

(i) the Court shall ask the accused whether he wishes to apply for an adjournment on the ground that any of these rules relating to procedure before trial have not been complied with and that he has been prejudiced thereby or on the ground that he has not had sufficient opportunity for preparing his defence;

(ii) Where the accused applies for an adjournment;

(a) the accused may adduce evidence in support of his application and the prosecutor may adduce evidence in answer thereto; and

(b) the prosecutor may address the Court in answer to the application and the accused may reply to the prosecutor's address.

(iii) the Court may grant an adjournment if it thinks the interests of justice so require.

84. **Opening address.**—(1) The prosecutor may, if he so desires, and shall, if required by the Court, make an opening address explaining the charge and the nature and general effect of the evidence which he proposes to adduce.

(2) The witnesses for the prosecution shall then be called and give their evidence.

85. **Additional witness.**—Where the prosecutor intends to adduce evidence which is not contained in any record or abstract of evidence given to the accused notice of such intention together with the particulars of the evidence shall, when practicable, be given to the accused a reasonable time before the evidence is adduced. If such evidence is adduced without such notice or particulars having been given, the Court may, if the accused so desires either adjourn after receiving the evidence or allow any cross-examination arising out of that evidence to be postponed, and the Court shall inform the accused of his right to apply for such an adjournment or postponement.

86. **Dropping witnesses.**—The prosecutor shall not be bound to call all the witnesses against the accused whose evidence is contained in the record or abstract of evidence, nor a witness when he has notified the accused that he intends to call under rule 85, but if the prosecutor does not intend to call such witness to give evidence, he shall either tender him for cross-examination by the accused, or give the accused reasonable notice that he does not intend to call the witness and that the accused will be allowed to communicate with him and to call him as a witness for the defence, if he so desires and if the witness is available.

87. **Withdrawal of witnesses.**—During a trial a witness other than the prosecutor or accused shall not, except by leave of the Court, be in Court while not under examination, and if while he is under examination a discussion arises as to whether a question is to be allowed or not with regard to his evidence the Court may direct the witness to withdraw during such discussion.

88. **Examination of witnesses.**—(1) A witness may be examined by the person calling him and may be cross-examined by the opposite party to the proceedings and on the conclusion of any such cross-examination may be re-examined by the person who called him on matters arising out of the cross-examination.

(2)(a) The person examining a witness shall put his questions to the witness orally and unless an objection is made by the witness, the Court, the Law Officer, the prosecutor or by the accused, the witness shall reply forthwith.

(b) Where such an objection is made, the witness shall not reply until the objection has been disposed of.

(3) The Court may allow the cross-examination or re-examination of a witness to be postponed.

(4) Before the examination of a witness, he shall be administered an oath or affirmation in the following form or in such other form to the same purport as the Court ascertains to be in accordance with his religion or otherwise binding on his conscience.

FORM OF OATH

I.....swear by Almighty God that whatever I shall state, shall be the truth, the whole truth and nothing but the truth.

FORM OF AFFIRMATION

I.....do solemnly, truly and sincerely declare and affirm that whatever I shall state, shall be the truth, the whole truth and nothing but the truth.

89. **Questioning by the court.**—(1) The presiding officer, the Law Officer and any member of the Court may put questions to a witness.

(2) Upon any such question being answered, the prosecutor and the accused may put to the witness such questions arising from the answer which he has given as seem proper to the Court.

90. **Reading over of evidence.**—(1)(a) The record which has been made of the evidence given by a witness shall be read back to him before he leaves the Court and when this is done he may ask for the record to be corrected or explain the evidence which he has given.

(b) Where any such correction is made or explanation given, the prosecutor and the accused may put such questions to the witness respecting the correction or explanation as seem proper to the Court.

(2) When a shorthand writer is employed it shall not be necessary to comply with sub-rule (1), if, in the opinion of the Court and the Law Officer (if any) it is unnecessary to do so:

Provided that if any witness so demands, sub-rule (1) shall be complied with.

91. **Calling or recalling witnesses by the Court.**—(1)(a) The Court may at any time before it closes to deliberate on its finding or if there is a Law Officer before he begins to sum up, call a witness or recall a witness, if in the opinion of the Court it is in the interest of justice to do so.

(b) Where the Court calls a witness or recalls a witness under this rule, the prosecutor and the accused may put such questions to the witness as seem proper to the Court.

(2) The prosecutor and the accused may, at any time before the Court closes to deliberate on its finding or if there is a Law Officer before he begins to sum up, recall a witness by leave of the Court and the prosecutor and the accused may put such questions to the witness as seem proper to the Court.

92. **Submission of no case to answer and stopping of cases.**—(1)(a) At the close of the case for the prosecution the accused may submit to the Court in respect of any charge that the prosecution has failed to establish a prima facie case for him to answer and that he should not be called upon to make his defence to that charge.

(b) Where the accused makes such submission the prosecutor may address the Court in answer thereto and the accused may reply to the prosecutor's address. &

(2) The Court shall not allow the submission unless it is satisfied that—

(a) the prosecution has not established—a prima facie case on the charge as laid; and

(b) it is not open to it on the evidence to make a special finding under either section 93 or sub-rule (4) of rule 99.

(3)(a) Where the Court allows the submission, it, shall find the accused not guilty of the charge to which it relates and subject to confirmation the finding shall forthwith be announced in open Court.

(b) Where the Court disallows the submission it shall proceed with the trial of the offence as charged.

(4) The Court may, of its own motion, after the close of the hearing of the case for the prosecution, and after hearing the prosecutor find the accused not guilty of the charge and subject to confirmation the finding shall forthwith be announced in open Court.

93. **Case for the defence.**—(1) After the close of the case for the prosecution, the presiding officer or the Law Officer (if any) shall explain to the accused that,—

(a) if he wishes, he may give evidence on oath as a witness or make a statement without being sworn but that he is not obliged to do either.

(b) if he gives evidence on oath, he shall be liable to be cross examined by the prosecutor and to be questioned by the Court.

(2) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of the trial, without previously warning the accused, put such questions to him as the Court

considers necessary, and shall for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them but the Court may draw such inference from such refusal or answers as it thinks just.

(4) The answers given by the accused may be taken into consideration in such trial and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(5) If the accused intends to call a witness to the facts of the case other than himself, he may make an opening address outlining the case for the defence before the evidence for the defence is given.

94. **Witnesses for defence.**—(1) After rule 93 has been complied with, the witnesses for the defence (if any) shall be called to give their evidence.

(2) The provisions of rules 88, 89 and 90 shall apply to the witnesses for the defence as they apply to the evidence of witnesses for the prosecution.

95. **Witnesses in reply.**—After the witnesses for the defence have given their evidence the prosecutor may by leave of the Court call a witness or recall a witness to give evidence on any matter raised by the accused in his defence which the prosecution could not properly have mentioned to the Court before the accused disclosed his defence or which the prosecution could not reasonably have foreseen.

96. **Closing addresses.**—(1) After all the evidence has been given the prosecutor and the accused may each make a closing address to the Court.

(2) The accused shall be entitled to make his closing address after the closing address by the prosecutor unless the accused has called a witness to facts other than himself, in which case the prosecutor shall be entitled, subject to sub-rules (3) and (4) to make his closing address after the accused has made the closing address.

(3) Where two or more accused are tried jointly, any one of them who has called no such witness shall be entitled to make his closing address after the prosecutor has made the closing address.

(4) (a) Where two or more accused are represented by the same defending officer or counsel he may make one closing address only.

(b) Where any one of the accused for whom he appears has called no witness to facts other than himself such defending officer or counsel shall be entitled to make his closing address after the prosecutor has made the closing address.

97. **Summing up by Law Officer.**—After the closing addresses, if there is a Law Officer he shall sum up the evidence and advise the Court on the law relating to the case in open court.

98. **Deliberation on finding.**—(1) The Court shall deliberate on its finding in closed Court in the presence of the Law Officer.

(2) The opinion of each member of the Court as to the finding shall be given by word of mouth on each charge separately starting with the junior most in rank.

99. **Record and Announcement of Finding.**—(1) The finding on every charge upon which the accused is arraigned shall be recorded and except as provided in these rules, shall be recorded simply as a finding of "Guilty" or of "Not Guilty".

(2) Where the Court is of opinion as regards any charge that the facts proved do not disclose the offence charge or any offence of which he might under the Act legally be found guilty on the charge as laid, the Court shall acquit the accused of that charge.

(3) If the Court has doubts as regards any charge whether the facts proved show the accused to be guilty on the charge as laid, it may, before recording a finding on that charge, refer to the confirming authority for an opinion, setting out the facts which it finds to be proved and may if necessary, adjourn for that purpose.

(4) Where the Court is of opinion as regards any charge that the facts which it finds to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, it may, instead of a finding of "Not Guilty" record a special finding.

(5) The special finding may find the accused guilty on a charge subject to the statement of exceptions or variations specified therein.

(6) Where there are alternative charges, and the facts proved appear to the Court not to constitute the offence mentiond in any of those alternative charges, the Court shall record a finding of "Not Guilty" on that charge.

(7) The Court shall not find the accused guilty on more than one of two or more charges laid in the alternative, even if conviction upon one charge necessarily connotes guilty upon the alternative charge or charges.

(8) If the Court thinks that the facts proved constitute one of the offences stated in two or more of the alternative charges, but doubts which of those offences the facts do at law constitute, it may, before recording a finding on those charges, refer to the confirming authority for an opinion, setting out the facts which it finds to be proved and stating that it doubts whether those facts constitute in law the offence stated in such one or other of the charges and may, if necessary, adjourn for that purpose.

(9) The finding on each charge shall be announced forthwith in open Court as subject to confirmation.

100. **Procedure on Acquittal.**—If the finding on all the charges is "Not Guilty" the presiding officer shall affix his signature and date on the finding and such signature shall authenticate the whole of the proceedings, and the proceedings upon being signed by the Law Officer (if any) shall be at once transmitted for confirmation.

101. **Procedure on Conviction.**—(1) If the finding on any charge is "Guilty", then, for the guidance of the Court in determining its sentence, and of the confirming authority in considering the sentence, the Court, before deliberating on the sentence, shall, whenever possible, take evidence of and record the general character, age, service, rank, any recognised acts of gallantry or distinguished conduct of the accused, any previous convictions of the accused either by Security Force Court or a criminal court, any previous punishments awarded to him by an officer exercising authority under section 53 or 55 as the case may be; the length of time he has been in arrest or in confinement on any previous sentence, and any decoration, or reward, of which he may be in possession or to which he is entitled.

(2) Evidence on the above matters may be given by a witness verifying a statement which contains a summary of the entries in the service books respecting the accused and identifying the accused as the person referred to in that summary.

(3) The accused may cross-examine any such witness and may call witnesses to rebut such evidence; and if the accused so requests, the service books or a duly certified copy of the material entries therein, shall be produced and if the accused alleges that the summary is in respect not in accordance with the service books or such certified copy, as the case may be, the Court shall compare the summary with those books or copy and if it finds that it is not in accordance therewith, shall cause summary to be corrected or the objection of the accused to be recorded.

(4) When all the evidence on the above matters has been given, the accused may address the Court thereon and in mitigation of punishment.

102. **Sentence.**—The Court shall award a single sentence in respect of all the offences of which the accused is found guilty, and such sentence shall be deemed to be awarded in respect of which it can be legally given and not to be awarded in respect of which it cannot be legally given.

103. **Recommendation for mercy.**—(1) Where the Court makes a recommendation to mercy it shall give its reasons for its recommendation.

(2) The number of opinions by which the recommendation to mercy mentioned in this rule, or any question relative thereto, is adopted or rejected, may be entered in the proceedings.

104. **Announcement of Sentence and Signing and Transmission of Proceedings.**—(1) The sentence together with any recommendation to mercy and the reasons for any such recommendation shall be announced forthwith in open Court. The sentence will be announced as subject to confirmation.

(2) Upon the Court awarding the sentence, the presiding officer shall affix his signature and date the sentence and such signatures shall authenticate the whole of the proceedings and the proceedings upon being signed by the Law Officer (if any), shall at once be transmitted for confirmation.

105. **Revision.**—(1)(a) Where the finding is sent back for revision under section 113, the Court shall re-assemble in open Court, the revision order shall be read and if the Court, is directed to take fresh evidence such evidence shall be taken in open Court.

(b) Where such fresh evidence is recorded otherwise than at the instance of the accused, the accused shall be given a further opportunity to lead evidence in respect of matters brought out in such fresh evidence.

(c) The prosecutor and the accused shall be given a further opportunity to address the Court in respect of the fresh evidence led.

(d) The Law Officer may also give a further summing up.

(2) Where the revision of finding does not involve taking of fresh evidence, the accused shall be given an opportunity to address the Court in respect of matter raised in the revision order.

(3)(a) The Court shall then deliberate on its finding in closed Court and if the Court does not adhere to its former finding, it shall revoke the finding and sentence and record a new finding and if such new finding involves a sentence pass sentence afresh.

(b) Where the original finding was one of "Not Guilty", the Court shall, before passing sentence comply with rules 101 and 102.

(4)(a) Where the sentence alone is sent back for revision, the revision order shall be read in open Court and the accused given an opportunity to address the Court in regard to matters referred to in the revision order.

(b) The Court shall then reconsider its sentence in closed Court and if it does not adhere to the sentence, revoke the sentence and pass sentence afresh.

(5) Where the sentence alone is sent for revision the Court shall not revise the finding.

106. **Confirmation and Promulgation.**—(1) When a confirming authority receives the record of the proceedings of a Court, it shall record its decision thereon and on any sentence and any order which the Court may have made under section 105 on the record of the proceedings in the appropriate form set out in Appendix VIII and such record of his decision shall form part of the record of the proceedings.

(2) When a Court has accepted a plea of guilty made under rule 79 the confirming authority may confirm its finding notwithstanding that the Court has accepted the plea without the concurrence of the convening officer, if, in the opinion of the confirming authority it is in the interests of justice to do so.

(3)(a) When a Court has rejected a plea to the jurisdiction of the Court or a plea in bar of trial or has over-ruled an objection to a charge, it shall not be necessary for the confirming authority to approve specifically the decision of the Court, but its approval shall be implied from its confirming the finding on the charge to which the plea or objection relates.

(b) Where it disapproves the decision of the Court to reject the plea or to over-rule the objection it shall withhold confirmation of the finding on the charge to which the plea or objection relates.

(4) A confirming authority may state its reasons for withholding confirmation in any case, but if it withholds confirmation where a Court has rejected a plea to the jurisdiction or plea in bar of trial or has over-ruled an objection to the charges because it disapproves this decision of the Court, it shall when recording its decision under sub-rule (1) state that it has withheld confirmation for this reason.

(5) Where the sentence of a Court is improperly expressed, the confirming authority may in confirming the sentence vary the form thereof so that it shall be properly expressed.

(6) Whenever it appears that there is sufficient evidence on a plea of guilty under either sub-rule (1) or sub-rule (2) of rule 79 to justify the finding of the Court, such finding and any lawful sentence consequent thereon may be confirmed, and if confirmed shall be valid, notwithstanding any deviation from these rules, if the accused has not been prejudiced by such deviation.

(7) While confirming the finding the confirming authority may either unconditionally or subject to conditions which the accused accepts, reduce or remit a portion of the sentence or commute the punishment to one given lower in the scale of punishments in section 48.

(8) (a) When a confirming authority has confirmed a finding and a sentence of a Court or has withheld confirmation thereof, it shall send the record of the proceedings to the Commandant of the accused for promulgation to the accused of the finding and sentence or the fact that confirmation has been withheld as the case may be.

(b) The fact of promulgation shall be recorded on the record of the proceedings in the form set out in Appendix IX.

(c) Where confirmation has been withheld because the confirming authority disapproves the Court's decision to reject a plea to the jurisdiction or a plea in bar of trial or to over-rule an objection to the charge, the accused shall be so informed.

CHAPTER X

Procedure of Security Force Courts and Incidental Matters.

107. **Seating of members.**—The members of a Court shall take their seats according to their rank.

108. **Responsibility of Presiding Officer.**—(1) The presiding officer is responsible for the trial being conducted in proper order, and in accordance with the Act, rules made thereunder and in a manner befitting a court of justice.

(2) It is the duty of the presiding officer to see that the accused has a fair trial, and that he does not suffer any disadvantage in consequence of his position as a person under trial, or of his ignorance, or of his incapacity to examine or cross-examine witnesses, or otherwise.

109. **Power of Court over address of prosecutor and accused.**—(1) It is the duty of the prosecutor to assist the Court in the administration of justice, to behave impartially, to bring the whole of the transaction before the Court and not to take any unfair advantage of, or suppress any evidence in favour of the accused.

(2) The prosecutor may not refer to any matter, not relevant to the charge or charges, then before the Court, and it is the duty of the Court to stop him from so doing and also to restrain any undue violence of language or want of fairness or moderation on the part of the prosecutor.

(3) The Court shall give reasonable facilities to the accused, in making his defence; the accused must abstain from any remarks contemptuous or disrespectful towards the Court, and from coarse and insulting language towards others, but he may for the purpose of his defence impeach the evidence and charge other persons with blame and even criminality, subject, if he does so, to any liability which he may thereby incur. The Court may caution the accused as to the irrelevance of his defence, but shall not, unless in special cases stop his defence solely on ground of such irrelevance.

110. **Sitting in closed Court.**—(1) A Court shall, where it is so directed by these rules, and may in any other case on any deliberation amongst the members, sit in closed Court.

(2) No person shall be present in closed Court except the members of the Court, the Law Officer (if any) and any officers under instruction.

(3) For the purpose of giving effect to the foregoing provisions of this rule, a Court may either retire or cause the place where it sits to be cleared of all other persons not entitled to be present.

(4) Except as hereinbefore mentioned all proceedings, including the view of any place, shall be in open Court and in the presence of the accused subject to sub-rule (5).

(5) The Court shall have the power to exclude from the Court any witness who has yet to give evidence or any other person, other than the accused, who interferes with its proceedings.

111. **Continuity of trial and adjournment of Court.**—(1) When a Court is once assembled and the accused has been arraigned, the Court shall continue the trial from day to day in accordance with these rules unless it appears to the Court that an adjournment is necessary for the ends of justice or that such continuance is impracticable.

(2) (a) A Court may from time to time adjourn its proceedings and meet at such place as may be convenient, and

(b) wherever necessary, visit the scene of occurrence.

(3) The senior officer on the spot may also for exigencies of service adjourn or prolong the adjournment of the Court.

(4) A Court in the absence of a Law Officer (if one has been appointed for that Court) shall not proceed, and shall adjourn.

(5) If the time to which an adjournment is made is not specified, the adjournment shall be until further orders from the proper Force authority; and, if the place to which an adjournment is made is not specified, the adjournment shall be to the same place or to such other place as may be specified in further orders from the proper Force authority.

112. **Suspension of Trial.**—(1) Where, in consequence of anything arising while the Court is sitting, the Court is unable by reason of dissolution as specified in section 71 or otherwise, to continue the trial, the presiding officer or, in his absence the senior member present, shall immediately report the facts to the convening authority.

113. **Proceedings on death or illness of accused.**—In case of the death of the accused or of such illness of the accused as renders it impossible to continue the trial, the Court shall ascertain the fact of the death or illness by evidence and record the same and adjourn and transmit the proceedings to the convening authority.

114. **Death, retirement or absence of Presiding Officer.**—In the case of the death, retirement on challenge or unavoidable absence of the presiding officer, the next senior officer shall take the place of the presiding officer and the trial shall proceed if the Court is still composed of not less than the minimum number of officers of which it is required by law to consist.

115. **Presence throughout of all members of Court.**—(1) A member of a Court who has been absent while any part of the evidence on the trial of an accused person is taken, shall take no further part in the trial by that Court of that person, but the Court will not be affected unless it is reduced below the legal minimum.

(2) An officer shall not be added to a Court after the accused has been arraigned.

116. **Taking of opinions of members of Court.**—(1) Every member of a Court must give his opinion by word of mouth on every question which the Court has to decide, and must give his opinion as to the sentence notwithstanding that he has given his opinion in favour of acquittal.

(2) The opinions of the members of the Court shall be taken in succession, beginning with the member lowest in rank.

117. **Procedure on Incidental Questions.**—If any objection is raised on any matter of Law, evidence, or procedure, by the prosecutor or by or on behalf of the accused during the trial, the prosecutor or the accused or counsel or the

defending officer (as the case may be) shall have a right to answer the same and the person raising the objection shall have a right to reply.

118. **Evidence when to be translated.**—When any evidence is given in a language which any of the officers composing the Court, the accused or the Law Officer does not understand, it shall be translated into a language which he understands.

119. **Record in Proceedings of Transactions of a Security Force Court.**—(1) At a Court the Law Officer or, if there is none, the presiding officer shall record or cause to be recorded all transactions of the Court, and shall be responsible for the accuracy of the record (in these rules referred to as the proceedings); and if the Law Officer is called as a witness by the accused, the presiding officer shall be responsible for the accuracy of the record in the proceedings, of the evidence of the Law Officer.

(2) The evidence shall be taken down in a narrative form in as nearly as possible the words used, but in any case where the prosecutor, the accused, the Law Officer, or the Court considers it material, the question and answer shall be taken down verbatim.

(3) Where an objection has been taken to any question or to the admission of any evidence or to the procedure of the Court, such objection shall if the prosecutor or accused so requests or the Court thinks fit, be entered upon the proceedings together with the grounds of the objection and the decision of the Court thereon.

(4) Where any address by, or on behalf of the prosecutor or the accused, is not in writing, it shall not be necessary to record the same in the proceedings further or otherwise than the Court thinks proper, except that,

(a) the Court shall in every case make such record of the defence, made by the accused as will enable the confirming officer to judge of the reply made by, or on behalf of, the accused to each charge against him, and

(b) the Court shall also record any particular matters in the address by or on behalf of, the prosecutor or the accused which the prosecutor or the accused, as the case may be, may require.

(5) The Court shall not enter in the proceedings any comment or anything not before the Court, or any report of any fact not forming part of the trial, but if any such comment or report seems to the Court necessary, the Court may forward it to the proper authority in a separate document, signed by the presiding officer.

120. **Custody and Inspection of Proceedings.**—The proceedings shall be deemed to be in the custody of the Law Officer (if any) or, if there is none, of the presiding officer but may, with proper precaution for their safety, be inspected by the members of the Court, the prosecutor and accused, at all reasonable times before the Court is closed to consider the finding.

121. **Transmission of Proceedings.**—The proceedings shall, at once, be sent by the person having the custody thereof to such person as may be directed by the order convening the Court, or, in default of any such direction, to the confirming authority.

122. **Defending Officer, Friend of Accused and Counsel.**—(1) At any General or Petty Security Force Court an accused person may be represented by a counsel or by any officer subject to the Act who shall be called "the defending officer" or assisted by any person whose services he may be able to procure and who shall be called "the friend of the accused".

(2) The defending officer shall have the same rights and duties as appertain to a counsel under these rules and shall be under the like obligations.

(3) The friend of the accused may advise the accused on all points and suggest the questions to be put to the witnesses, but he shall not examine or cross-examine the witnesses, or address the Court.

123. **Requirements for Appearance of Counsel.**—(1) An accused person intending to be represented by a counsel shall give to his Commandant or to the convening officer the earliest practicable notice of such intention, and, if no sufficient notice has been given, the Court may, if it thinks fit, on the application of the prosecutor, adjourn to enable him to obtain a counsel on behalf of the prosecutor at the trial.

(2) Where the convening officer so directs, counsel may appear alongwith the prosecutor, but in that case, unless the notice referred to in sub-rule (1) has been given by the accused, notice of the direction for counsel to appear shall be given to the accused at such time (not in any case less than seven days) before the trial as would, in the opinion of the Court, have enabled the accused to obtain counsel to assist him at the trial.

(3) The counsel, who appears before a Court on behalf of the prosecutor or accused, shall have the same rights as the prosecutor or accused for whom he appears to call, and orally examine, cross-examine, and re-examine witnesses, to put in any plea, and to inspect the proceedings and shall have the right otherwise to act in the course of the trial in place of the person on whose behalf he appears, and he shall comply with these rules as if he were that person and in such a case that person shall have no right himself to do any of the aforesaid matters except as regards the statement allowed by sub-rule (2) of rule 93 and sub-rule (4) of rule 101 or except so far as the Court permits him so to do.

(4) When counsel appears on behalf of the prosecutor; the prosecutor if called as witness, may be examined and re-examined as any other witness.

124. **Disqualification of Law Officer.**—An officer who is disqualified for sitting on a Court, shall be disqualified for acting as a Law Officer at that Court.

125. **Substitution on Death, Illness or Absence of Law Officer.**—If the Law Officer dies, or from illness or from any cause whatever is unable to attend, the Court shall adjourn, and the presiding officer shall report the circumstances to the convening officer; and a fit person may be appointed by that officer who shall be sworn or affirmed, and act as Law Officer for the residue of the trial, or until the Law Officer returns.

126. **Power and Duties of Law Officer.**—Where a Law Officer has been named to act on the Court, he shall,—

(a) give his opinion on any question of law relating to the charge or trial whenever so required by the Court, the prosecutor or the accused;

(b) inform the Court of any irregularity or other infirmity in the proceedings;

(c) inform the convening officer and the Court of any infirmity or defect in the charge or in the constitution of the Court;

(d) sum up the evidence and give his opinion on any question of law, before the Court proceeds to deliberate upon its findings

(2) It shall be the duty of the Law Officer to ensure that the accused does not suffer any disadvantage in consequence of his position as such, or because of ignorance or incapacity to examine or cross-examine witnesses and for this purpose the Law Officer may, with the permission of the Court, call witnesses and put questions to them which appear to him to be necessary or desirable.

(3) In the discharge of his duties, the Law Officer shall maintain an attitude of strict impartiality.

(4) Where any opinion has been given by the Law Officer to the Court on any matter before it, it may be entered in the proceedings, if the Law Officer or the Court desires it to be entered.

(5) The Law Officer shall represent the Chief Law Officer at a Security Force Court.

127. **Finding of Insanity.**—Where the Court finds either that the accused, by reason of unsoundness of mind, is incapable of making his defence, or that he committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, the presiding officer or in the case of Summary Security Force Court, the officer holding the trial, shall affix his signature and the date on the finding which shall also be signed by the Law Officer (if any) and thereupon the proceedings shall, at once, be transmitted to the confirming authority or in the case of Summary Security Force Court to the Deputy Inspector General empowered to countesign them.

128. **Preservation of Proceedings.**—The proceedings of every Court shall, after promulgation, be forwarded, to the office of the Chief Law Officer and be preserved there for not less than seven years, or until the sentence awarded by the Court has expired, whichever is later.

129. **Right of Person tried to Copies of Proceedings.**—Every person tried by a Security Force Court shall be entitled to obtain on demand, at any time after the confirmation of the finding and sentence, when such confirmation is required and before the proceedings are destroyed, from the Chief Law Officer a copy thereof, including the proceedings upon revision, if any.

130. **Copy of proceedings not to be given in certain cases.**—Notwithstanding anything contained in rule 129 if the Central Government is satisfied for reasons to be recorded that it is against the interests of the Security of the State or friendly relations with foreign States to supply a copy of the proceedings or any part thereof under the said rule, he shall not be furnished with such a copy;

Provided that if the Central Government is satisfied that the person demanding the copy is desirous of submitting a petition in accordance with the Act or instituting any action in a court of law in relation to the finding or sentence, it shall permit inspection of the proceedings by such a person or his legal advisor, if any, on the following conditions, namely:—

(a) the inspection shall be made at such times and such places as the Central Government or any authority authorised by it may direct; and

(b) the person allowed to inspect the proceedings shall, before such inspection, furnish,—

(i) an undertaking, in writing, that he shall not make copies of the proceedings or any part thereof and that the information or documents contained in such proceedings shall not be used by him, for any purpose whatsoever, other than for the purpose of submitting a petition in accordance with the Act or instituting an action in a court of law in relation to the said finding or sentence; and

(ii) a certificate that he is aware that he may render himself liable to prosecution under sections 3 and 5 of the Indian Official Secrets Act 1923 (19 of 1923) if he commits any act specified in the said sections in relation to the documents or information contained in the said proceedings.

131. **Loss of proceedings.**—(1) If, before confirmation, the original proceedings of a Court which require confirmation or any part thereof, are lost, a copy thereof, if any, certified by the presiding officer or the Law officer at the Court may be accepted in lieu of the original.

(2) If there is no such copy, and sufficient evidence of the charge, finding, sentence, and transactions of the Court can be procured, that evidence may, with the assent of the accused, be accepted in lieu of the original proceedings, or part which have been lost.

(3) In any case mentioned above in this rule the finding and sentence may be confirmed, and shall be valid as if the original proceedings or part thereof had not been lost.

(4) If the accused refuses the assent referred to in sub-rule (2), he may be tried again, and the finding and sentence of the previous Court of which the proceeding have been lost shall be void.

(5) If, after confirmation or in any case where confirmation is not required, the original proceedings or any part thereof are lost, and there is sufficient evidence of the charge, finding, sentence, and transactions of the Court and of the confirmation (if required) of the finding and sentence, that evidence shall be a valid and sufficient record of the trial for all purposes.

132. **Offences by witnesses and others.**—When a Court is of opinion that there is ground for inquiring into any offence specified in sections 37 and 38 and committed before it or brought to its notice in the course of its proceedings, which would if done by a person subject to the Act, have constituted such an offence, such Court may proceed as follows, that is to say:—

(a) if the person who appears to have committed the offence is subject to the Act, the Court may bring his conduct to the notice of his Commandant;

(b) if the person who appears to have done the act is amenable to military, naval or air force law the Court may bring his conduct to the notice of the proper military, naval or air force authority, as the case may be;

(c) in other cases the officer who summoned the witness to appear or the presiding officer or officer holding the Court, as the case may be, may forward a written complaint to the nearest Magistrate of the first class having jurisdiction, and in the case of acts which would, if done by a person subject to this Act have constituted an offence under clause(e) of section 37 or section 38, the Court, after making any preliminary inquiry that may be necessary may send the case to the nearest Magistrate of the first class having jurisdiction for inquiry or trial in accordance with section 476 of the Code of Criminal Procedure, 1898 (5 of 1898).

CHAPTER XI

Summary Security Force Courts

133. **Proceedings.**—The officer holding the trial, hereinafter in this Chapter called the Court, shall record, or cause to be recorded the transactions of every Summary Security Force Court.

134. **Evidence when to be translated.**—(1) When any evidence is given in a language which the Court or the accused does not understand, that evidence shall be translated to the Court or accused as the case may be in a language which it or he does understand.

(2) The Court shall for this purpose either appoint an interpreter, or shall itself take the oath or affirmation prescribed for the interpreter at a Summary Security Force Court.

(3) When documents are produced for the purpose of formal proof, it shall be in the discretion of the Court to cause as much to be interpreted as appears necessary.

135. **Assembly.**—When the Court, the interpreter (if any) and the officers and subordinates officers attending the trial are assembled, the accused shall be brought before the Court and the oath or affirmation prescribed in rule 136 shall be taken by the persons therein mentioned.

136. **Swearing or affirming of court and interpreter.**—The Court shall take oath or affirmation in any one of the following forms or in such other form to the same purport which would, according to the religion or otherwise be binding on the conscience of the officer constituting the Court.

FORM OF OATH

"I.....swear by Almighty God that I will duly administer justice, according to the Border Security Force Act 1968 without partiality, favour or affection."

FORM OF AFFIRMATION

"I.....do solemnly, sincerely and truly declare and affirm that I will duly administer justice, according to the Border Security Force Act 1968 without partiality, favour or affection."

(2) The Court, or any other person empowered by it in this behalf shall administer to the interpreter (if any) an oath or affirmation in any of the following forms, or in such other form to the same purport as the Court ascertains to be according to the religion or otherwise binding on the conscience of the person who is to act as interpreter.

FORM OF OATH

"I.....swear by Almighty God that I will faithfully interpret and translate, as I shall be required to do touching the matter before this Court."

FORM OF AFFIRMATION

"I.....do solemnly, sincerely and truly declare and affirm that I will faithfully interpret and translate, as I shall be required to do touching the matter before this Court".

(3) The witnesses shall, after the administration of the oath and the affirmation, withdraw from the Court.

137. **Swearing of Court to try several accused persons.**—(1) A Summary Security Force Court may be sworn or affirmed at the same time to try any number of accused persons then present before it whether those persons are to be tried collectively or separately.

(2) In the case of several accused persons to be tried separately, the Court, when sworn or affirmed shall proceed with one case postponing the other cases and taking them afterwards in succession.

(3) Where several accused persons are tried separately upon charges arising out of the same transaction, the Court may, if it considers it to be desirable in the interests of justice, postpone consideration of any sentence to be awarded to any one or more such accused persons until the trials of all such accused persons have been completed.

138. **Arrangement of accused.**—(1) After the Court and interpreter (if any) are sworn or affirmed as above mentioned, the accused shall be arraigned on the charges against him.

(2) The charges on which the accused is arraigned shall be read and, if necessary, translated to him, and explained and he shall be required to plead separately to each charge.

139. **Objection by accused to charge.**—The accused, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Act, or is not in accordance with these rules.

140. **Amendment of charge.**—(1) At any time during the trial if it appears to the Court that there is mistake in the name or description of the accused in the charge-sheet, it shall amend the charge-sheet so as to correct that mistake.

(2) If on the trial of a charge it appears to the Court at any time before it has begun to examine the witnesses, that in the interests of justice any addition to, omission from, or alteration in, the charge if required, it may amend such charge and may, after due notice to the accused, and with the sanction of the officer empowered to convene a Petty Security Force Court for the trial of the accused if the amended charge requires such sanction, proceed with the trial on such amended charge.

141. **Special pleas.**—If a special plea to the general jurisdiction of the Court, or a plea in bar of trial, is offered by the accused, the procedure laid down in Chapter IX for disposing of such pleas shall, so far as may be applicable be followed.

142. **General plea of "Guilty" or "Not Guilty".**—(1) The accused person's plea of "Guilty" or "Not Guilty" (or if he refuses to plead or does not plead intelligibly either one or the other, a plea of "Not Guilty" shall be recorded on each charge.

(2) If an accused person pleads "Guilty", that plea shall be recorded as the finding of the Court; but before it is recorded, the Court shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty and shall advise him to withdraw that plea if it appears from the record or abstract of evidence (if any) or otherwise that the accused ought to plead not guilty.

(3) Where an accused person pleads guilty to the first two or more charges laid in the alternative, the Court may after sub-rule (2) has been complied with

and before the accused is arraigned on the alternative charge or charges, withdraw such alternative charge or charges as follow the charge to which the accused has pleaded guilty without requiring the accused to plead thereto, and a record to that effect shall be made in the proceedings of the Court.

143. **Procedure after plea of "Guilty".**—(1) Upon the record of the plea of "Guilty", if there are other charges in the same charge-sheet to which the plea is "Not Guilty", the trial shall first proceed with respect to those other charges, and, after the finding on those charges, shall proceed with the charges on which a plea of "Guilty" has been entered; but if there are alternative charges, the Court may either proceed with respect to all the charges as if the accused had not pleaded "Guilty" to any charge, or may, instead of trying him, record a finding of "Guilty" upon any one of the alternative charges to which he had pleaded "Guilty" and finding of "Not Guilty" upon all the other alternative charges which precede such charge.

(2) (a) After the record of the plea of "Guilty" on a charge (if the trial does not proceed on any other charges) the Court shall read the record or abstract of evidence and annex it to the proceedings, or if there is no such record, or abstract shall take and record sufficient evidence to enable it to determine the sentence, and the reviewing officer to know all the circumstances connected with the offence.

(b) The evidence shall be taken in like manner as is directed by these rules in the case of a plea of "Not Guilty".

(3) The accused may, after such evidence has been taken or as, the case may be, the record or abstract of evidence has been read, address the Court with reference to the charge and in mitigation of punishment and may call witnesses as to his character.

(4) (a) If from the statement of the accused, or from the record of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty", the Court shall alter the record and enter a plea of "Not guilty", and proceed with the trial accordingly.

(b) Any alternative charges withdrawn under sub-rule (1) shall be reinstated in the charge sheet and the trial shall take place as if they had never been withdrawn.

(5) If a plea of "Guilty" is recorded on some charges and the trial proceeds with respect to other charges in the same charge-sheet, the proceedings under sub-rules (2) and (3) shall take place after the findings on the other charges in the same charge-sheet are recorded.

(6) When the accused states anything in mitigation of punishment which in the opinion of the Court requires to be proved, and would, if proved, affect the amount of punishment, the Court may permit the accused to call witnesses to prove the same.

144. **Withdrawal of plea of "Not Guilty".**—The accused may, if he thinks fit at any time during the trial, withdraw his plea of "Not Guilty" and plead "Guilty" and in such case the Court shall at once, subject to compliance with sub-rule (2) of rule 142 record a plea and finding of "Guilty" and shall, so far as if necessary, proceed in manner directed by rule 143.

145. **Procedure after plea of "Not Guilty".**—(1) After the plea of "Not Guilty" to any charge, is recorded the evidence for the prosecution will be taken.

(2) At the close of the evidence for the prosecution the accused shall be asked if he has anything to say in his defence, or may defer such address until he has called his witnesses.

(3) The accused may then call his witnesses, including also witnesses to character.

146. **Witnesses in reply to defence.**—The Court may, if it thinks it necessary in the interests of justice, call witnesses in reply to the defence.

147. **Evidence of witnesses.**—The provisions of rules 88, 89 and 90 shall so far as may be, apply to the evidence of witnesses at a Summary Security Force Court as they apply to the evidence of witnesses at a General or Petty Security Force Court.

148. **Verdict.**—The Court shall after the evidence for prosecution and defence has been heard, give its opinion as to whether the accused is guilty or not guilty of the charge or charges.

149. **Finding.**—(1) The finding on every charge upon which the accused is arraigned shall be recorded and except as mentioned in these rules shall be recorded simply as a finding of "Guilty" or of "Not Guilty".

(2) When the Court is of opinion as regards any charge that the facts proved do not disclose the offence charged or any offence of which he might under the Act legally be found guilty on the charge as laid, the Court shall find the accused "Not Guilty" of that charge.

(3) When the Court is of opinion as regards any charge that the facts found to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, it may, instead of a finding of "Not Guilty" record a special finding.

(4) The special finding may find the accused guilty on a charge subject to the statement of exceptions or variations specified therein.

(5) The Court shall not find the accused guilty on more than one of two or more charges laid in the alternative, even if conviction upon one charge necessarily connotes guilt upon the alternative charge or charges.

150. **Procedure on Acquittal.**—Where the finding on each of the charges in a charge-sheet is "Not Guilty", the Court shall affix its signature and date the proceedings, the findings will be announced in open Court, and the accused will be released if under arrest, in respect of these charges.

151. **Procedure on finding of "Guilty".**—(1) Where the finding on any charge is "Guilty" the Court may record of its own knowledge, or take evidence of any record, the general character, age, service, rank, and any recognised acts of gallantry, or distinguished conduct of the accused, and previous convictions of the accused either by a Security Force Court, or a Criminal Court, any previous punishment awarded to him by an officer exercising authority under section 53, the length of time he has been in arrest or in confinement on any previous sentence, and any decoration, or reward, of which he may be in possession or to which he may be entitled.

(2) Where the Court does not record the matters mentioned in this rule of its own knowledge, evidence on these matters may be taken in the manner directed in rule 101 for similar evidence.

152. **Sentence.**—The Court shall award one sentence in respect of all the offences of which the accused is found guilty.

153. **Signing of Proceedings.**—The court shall affix its signature and the date to the sentence and such signature shall authenticate the whole of the proceedings.

154. **Charges in different charge-sheets.**—(1) When the charges at a trial by Summary Security Force Court are contained in different charge-sheets, the accused shall be tried on each charge-sheet separately up to and including the stage of finding

(2) The Court shall, thereafter, comply with rules 150 or 151 as the case may be.

155. **Clearing the Court.**—(1) The officer holding the trial may clear the Court to consider the evidence or to consult with the officers, and subordinate officer, attending the trial.

(2) Subject to the provisions of sub-rule (1), all the proceedings, including the view of any place, shall be in open Court, and in the presence of the accused.

156. **Adjournment.**—(1) A Court may,—

(a) from time to time adjourn its proceedings and meet at such place as may be convenient; and

(b) wherever necessary visit the scene of occurrence.

157. **Friend of the accused.**—During a trial at a Summary Security Force Court an accused may take the assistance of any person, including a legal practitioner as he may consider necessary;

Provided that such person shall not examine or cross-examine witnesses or address the Court.

158. **Memorandum to be attached to proceedings.**—Where a Summary Security Force Court tries an offence which shall not ordinarily be tried without reference to an authority mentioned in sub-section (2) of section 74, an explanatory memorandum shall be attached to the proceedings.

159. **Promulgation.**—The sentence of a Summary Security Force Court shall be promulgated, in the manner usual in the service, at the earliest opportunity after it has been pronounced and shall subject to the provisions of the Act be carried out without delay after promulgation.

160. **Review of Proceedings.**—The proceedings of a Summary Security Force Court shall, immediately on promulgation be forwarded through the Chief Law Officer, or a Law Officer to the Deputy Inspector General under whom the accused may have been serving.

161. **Action by the Deputy Inspector General.**—(1) Where the Deputy Inspector General to whom the proceedings of a Summary Security Force Court have been forwarded under rule 160, is satisfied that injustice has been done to the accused by reason of any grave irregularity in the proceedings or otherwise, he may,—

(a) set aside the proceedings of the Court;

or

(b) reduce the sentence or commute the punishment awarded to one lower in the scale of punishment given in Section 48.

(2) Where no action under sub-rule (1) has been taken he shall countersign the proceedings and return it to the unit of the accused for promulgation.

(3) The proceedings shall, after its promulgation, be forwarded to the Chief Law Officer for custody.

CHAPTER XII

Execution of Sentence

162. **Direction About Sentence of Imprisonment.**—(1) A confirming authority or in the case of a Summary Security Force Court, the Court, shall direct that the sentence of imprisonment shall be undergone by confinement either in a civil prison or in Force custody.

(2) Such direction may be varied by any superior officer.

163. **Warrants.**—Warrants for committing a person to a civil prison to undergo sentence of imprisonment or to get such person back into Force Custody if so required or to order the release of such a person from civil prison or any variation done by any superior officer shall be in such form as may be appropriate to each case set out in Appendix 'X'.

(2) Such warrants shall be signed by the Commandant of the accused or by a staff officer on behalf of a Deputy Inspector General, Inspector General or the Director General.

164. **Warrant in case of Sentences of Death.**—(1) Where a person is sentenced to death by hanging, a warrant in the form set out in Appendix XI shall be sent by the Director General to the Superintendent of the Prison where facilities for carrying out such a sentence exist, after the sentence has been confirmed by the Central Government and the accused shall be committed to the same prison by his Commandant on the appropriate warrant.

(2) Where an accused person is sentenced to death by being shot, a warrant on the appropriate form set out in Appendix XI shall be issued by the Director General, to Deputy Inspector General under whom the accused may be serving, after the sentence has been confirmed by the Central Government, and the Deputy Inspector General shall arrange for the execution of the sentence.

165. **Changes in Sentence.**—Where any change is made in the sentence of a person already committed to a civil prison, such change shall be communicated to the Superintendent of the Prison to which such person has been committed by the Commandant or such other person as is mentioned in rule 163 on the form set out in Appendix XII.

166. **Sentence of Dismissal.**—(1) Sentence of dismissal shall take effect from the date of promulgation of such sentence or from any subsequent date as may be specified at the time of promulgation.

(2) A sentence of dismissal combined with imprisonment to be undergone in a civil prison shall not take effect until such person has been committed to a civil prison.

CHAPTER XIII

Petitions

167. **Petitions Against Finding and Sentence of Court.**—(1) A person subject to the Act who has been tried by a Court shall be allowed to put in one petition before confirmation, to the confirming authority and one petition after confirmation to any officer mentioned in section 117.

(2) In the case of a Summary Security Force Court he shall be allowed to put in one petition only to any of the officers mentioned in section 117.

168. **Period of Limitation.**—(1) A petition, before confirmation, shall be submitted, within one week of the conclusion of trial.

(2) A petition after confirmation shall be submitted within 3 months of the date on which the sentence was promulgated;

Provided that the time taken by such person to obtain a copy of the proceedings shall be excluded in calculating this period of 3 months.

169. **Mode of Submitting Petitions.**—(1) (a) A petition by a person who is still a member of the Force shall be submitted through his Commandant.

(b) A petition by a person who has ceased to be a member of the Force shall be submitted to the Commandant of the unit in which the trial was held.

(2) An officer to whom a petition is submitted or to whom a petition has been forwarded shall forward it to the next superior within a period of one week;

Provided that an officer may not forward a petition if he is competent to give the redress asked for and decides to do so.

(3) An officer receiving a petition may send it to the Chief Law Officer or a Law Officer for advice.

CHAPTER XIV

Courts of Inquiry

170. **Composition.**—A court of inquiry shall consist of an officer as presiding officer and at least two members who may be either officers, or subordinate officers of both. Persons not subject to the Act may be appointed as members when the court is to investigate matters of a specialised nature, and officers subject to the Act with specialist qualifications are not available to be members

171. **Assembly.**—A court of inquiry may be assembled by order of a Commandant or any officer or authority superior to the Commandand

172. **Assembly Order.**—The order assembling the court of inquiry shall state the composition of the court, the time and place for its assembly and clearly state the matters which the court will investigate. It will also provilde for the administrativ erequirements of the court.

173. **Procedure of Courts of Inquiry.**—(1) The proceedings of a court of inquiry shall not be open to the public. Only such persons may attend the proceedings as are permitted by the court to do so.

(2) The evidence of all witnesses shall be taken on oath or affirmation.

(3) Evidence given by witnesses shall be recorded in narrative form unless the court considers that any questions and answers may be recorded as such.

(4) The court may take into consideration any documents even though they are not formally proved.

(5) The court may ask witnesses any questions, in any form, that they consider necessary to elicit the truth and may take into consideration any evidence, whether the same is admissible under the Indian Evidence Act, 1872 (1 of 1872) or not.

(6) No counsel, or legal practitioner shall be permitted to appear before a court of inquiry.

(7) Provisions of section 89 shall apply for procuring the attendance of witnesses before the court of inquiry.

(8) Before giving an opinion against any person subject to the Act, the court will afford that person the opportunity to know all that has been stated against him, cross-examine any witnesses who have given evidence against him, and make a statement and call witnesses in his defence.

(9) The answers given by a witness to any question asked before the court shall not be admissible against such a witness on any charge at any subsequent occasion except a charge of giving false evidence before such court.

174. **Courts of Inquiry when to be Held.**—(1) A court of inquiry may be held to investigate into any disciplinary matter or any other matter of importance.

(2) In addition to a court of inquiry required to be held under section 62, a court of inquiry shall be held in the following cases:—

(a) (i) All unnatural deaths of persons subject to the Act or of other persons within the Force lines, an immediate report shall be sent through the messenger to the officer-in-charge of the Police Station within whose jurisdiction the place of such unnatural death is.

(ii) In cases when such report cannot, for any reason be delivered within a reasonable time, a court of inquiry shall be held into such unnatural death.

(iii) Immediately on receipt of information of an unnatural death the Commandant or the senior most officer of the Battalion present shall prepare a report on the proforma set out in Appendix XIII.

(b) All injuries sustained by persons subject to the Act which are likely to cause full or partial disability. The court shall in such case determine whether such injuries were attributable to service or not.

(c) All financial irregularities, losses, theft and misappropriation of public or Force property, where it is necessary to obtain the order of a superior officer on such irregularities, loss, theft or misappropriation.

(d) All loses of secret documents and any other material of secret or above security classification. Such a court of inquiry shall be ordered by an officer or authority superior to the unit Commandant having the lost document or material on its charge.

(e) All damage to private persons or property in respect of which there is likely to be a claim against the Government or the Force

175. **Action on the Proceedings of a Court of Inquiry.**—The proceedings of a court of inquiry shall be submitted by the presiding officer to the officer or authority who ordered the court. Such officer or authority on receiving the proceedings may either pass final orders on the proceedings himself, if he is empowered to do so, or refer them to a superior authority.

176. **Copies of Court of Inquiry Proceedings.**—A person subject to the Act against whom the court of inquiry has given an opinion or who is being tried by a Security Force Court on a charge relating to matters investigated by the court of inquiry, shall be entitled to copies of the proceedings of the court of enquiry unless the Director General orders otherwise.

CHAPTER XV

Miscellaneous

177. **Prescribed Officer under Section 11(2).**—The Commandant may, under sub-section (2) of section 11, dismiss or remove from the service any person under his command other than a officer or a subordinate officer.

178. **Authority prescribed for the purposes of Section 13(1).—The** authority for the purposes of sub-section (1) of section 13 shall be:

(i) Commandant, in respect of persons under his command;

(ii) Deputy Inspector General, in respect of a Commandant;

(iii) Inspector General, in respect of a Deputy Inspector General.

(iv) Director-General, in respect of all persons subject to the Act.

179. **Extent of Punishment.**—(1) If the Commandant is of and above the rank of a Deputy Commandant he may award to the full extent one or more of the punishments specified in section 53.

(2) If the Commandant is below the rank of a Deputy Commandant he may award punishment specified:—

(a) in clauses (a) and (b) of section 53 upto fourteen days.

(b) in other clauses of section 53 to the full extent.

130. **Manner of Proceeding against a person under Section 55(1).**—The manner in which an officer shall, under sub-section (1) of section 55 proceed against a person of or below the rank of a subordinate officer who is charged with an offence under the Act, be as, set out in Appendix XIV.

181. **Repeal and Savings.**—(1) All rules and orders relating to the matters covered by these rules shall stand repealed in so far as they are inconsistent with any of the provisions of these rules.

(2) Notwithstanding such repeal anything done or any action taken under the provisions of the rules or orders so repealed shall, in so far as such thing or action is not inconsistent with the provisions of these rules, be deemed to have been done or taken under the provisions of these rules as if the said provisions were in force when such thing was done or such action was taken and shall continue in force accordingly until superseded by anything done or any action taken under these rules.

CHAPTER XVI

182. **Transitory Provisions.**—Any rule or order applicable to the Force on the date these rules come into force will unless repugnant to these rules, continue to apply unless and until abrogated or modified by the Central Government or any other competent authority.

APPENDIX I

(Rule 13)

Border Security Force Recruiting Form

Blood Group———————

General No.——————— Battalion———————

1. Name——————— 2. Religion ———————

3. Caste/Tribe——————— 4. Father's name———————
(in case of Scheduled Castes and Tribes only).

5. Hair———————

6. Date of Birth by Christian Era———————
(As nearly as can be ascertained).

7. Height———————Cms. 8. Chest———————Cms.

9. Identification Marks———————

10. Residence, Village———————Thana———————
District———————State———————

11. Character and antecedents———————
verified by :

12. Occupation prior to enlistment———————

13. Educational qualifications, if any———————

14. Date of enrolment———————

15. Enrolled as———————

Photograph

Date of Photograph———————

FORM OF ENROLMENT

ENROLMENT OF

No.———————Name (in Block letters) ———————
as a———————in the Border Security Force

PART I

(Questions to be put before enrolment)

You are warned that if after enrolment, it is found that you have given a wilfully false answer to any of the first twelve of the following questions you will be liable to be punished as provided in the Border Security Force Act, 1968.

(ALL THE ANSWERS ARE TO BE WRITTEN IN BLOCK LETTERS)

Questions

1. What is your name ?
(Underline Surname)

2. (a) What is your place of birth ?
State Village/Town, District and State of Birth.

(b) What is your date of birth ?
(State in Christian Era)

(*N.B.*—To support the date of birth the person being enrolled will be required to produce in original, together with an attested copy, one of the certificates specified in Government orders from time to time).

3. What is your permanent Home address ?
   (a) Village/Town
   (b) Thana
   (c) Pargannah/Tehsil
   (d) District/Taluka
   (e) State

4. (a) What is your religion ?
   (b) Are you a member of a Scheduled Caste or Scheduled Tribe? If so State Caste or Tribe.

5. (a) Are you a citizen of India ? If so, whether by birth or descent or registration or naturalisation or otherwise ?
   (b) Are you a subject of NEPAL or SIKKIM ? If so, state of which of the two ?
   (c) If you are not a citizen of India or a subject of NEPAL or SIKKIM, what is your Nationality ?

   (*N. B.*—In the case of foreign nationals other than sbjects of NEPAL or SIKKIM, consent of the Central Government signified in writing, if any, should be produced before a person is enrolled).

   (d) Have you migrated from areas now in Pakistan ? If so, State the date of your migration.

6. What are your educational qualifications ? (Original Certificates, with one attested copy of each, are to be produced).

7. Are you married ?*
   If so state
   (i) Date of marriage(s).
   (ii) Name(s) of wife/wives.
   (iii) Nationality of wife/wives.
   *(This does not include widower/divorced).

8. (a) What is your father's name and address ? If dead, state last address District and State.
   (b) What is or was the nationality of your father ? If he is or was an Indian citizen, state whether by birth, descent registration, naturalisation or otherwise.

9. Are you or have you ever been a member of a party or organisation of a political, communal or cultural nature ? If so, state the name If the party or organisation with the period/periods of your membership therein.

10. (a) Are you in Government Service or have you been a Government servant ? If so, state full particulars and the reason for discharge and confirm that you were never dismissed from any Government service.
    (b) Are you in receipt of any allowance from the Government ? If so, on what account ?

11. (a) Do you now belong to any of the Armed Forces of India, the Reserves of any of the three Services, the Auxiliary Air Force, the Territorial Army, any Police Force in India or the Nepal State Army or any of the Forces of a foreign country?

(b) Have you ever served in any of the Armed Forces in India, the Reserves of any of the three Services, the Auxiliary Air Force, the Territorial Army, or any Police Force in India or Nepal State Army or any of the Forces of a Foreign Country ? If so, state in which and the cause of discharge. If you have served in more than one of the above named forces, or if you have served the same Force in two or more distinct periods, state the cause of discharge separately in each case.

(c) Do you desire your former service in the Indian Armed Forces or any Police Force to count for the purpose of calculation of Pay and/or Pension, if admissible ? If so, do you agree to recovery being effected of any gratuity you may have received for your former services in not more than thirty six monthly instalments from your pay commencing from the date of this enrolment and undertake to refund to the Government through such recoveries or otherwise the above gratuity in full within thirty six months of the date of your present enrolment ?

12. Have you ever been arrested, prosecuted, convicted, imprisoned, bound over, interned, externed or otherwise dealt with under any law in force in India or outside ? If so, state particulars.

13. Are you willing to be inoculated or re-inoculated and vaccinated or re-vaccinated?

14. Are you willing to be enrolled as a combatant in the Border Security Force ?

15. Are you willing to go wherever ordered by land, sea or air and not to allow any caste or social usages to interfere with the duties for which you are enrolled ?

16. Are you willing to serve in the Border Security Force until discharged, in accordance with the conditions of service as specified in Part II of this form of Enrolment, provided that the President shall so long require your services ?

17. Do you have any objections to take the following oath or to make the following affirmation at the time of your attestation ?

FORM OF OATH

I,_____do swear in the name of God that I will bear true faith and allegiance to the Constitution of India as by law established and that I will, as in duty bound, honestly and faithfully serve in the Border Security Force, and go wherever ordered, by air, land or sea and that I will observe and obey all commands of the President of the Union of India and the commands of any officer set over me even to the peril of my life.

Form of Affirmation

I, ——————————————, do solemnly, sincerely and truly declare and affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will, as in duty bound, honestly and faithfully serve in the Border Security Force and go wherever ordered by air, land or sea and that I will observe and obey all commands of the President of the Union of India and the commands of any officer set over me even to the peril of my life

Certificate

I, ——————————————, do solemnly declare that the answers furnished by me above are true.

( )
Signature of person enrolled.

Place——————————

Date——————————

Left Thumb impression of the person enrolled taken in the presence of the enrolling officer.

——————————Signature
——————————Name } of witness.
——————————Address

——————————

——————————

——————————

(*Name in Block letters).

PART II

Conditions of service

1. Subject to the provisions of the Border Security Force Act and the rules made thereunder, the period of which you are enrolled shall be——————years which may be extended by mutual agreement.

2. If you absent without leave, or desert, the total period of such absence shall not count towards the said period of ——————years.

3. On completion of the said period of——————years of service or further extension of tenure you will be entitled to claim your discharge and you will be discharged with all convenient speed, unless the country is engaged in hostilities, or a state of emergency has been declared or the battalion to which you belong is more than 15% under strength.

4. Your are liable to be discharged during the first year of the service if you are not likely to become an efficient member of the Force.

5. You will also be liable to be discharged if the Central Government decides to disband the Force or a portion of it.

Certificate by the person to be enrolled

I have understood the above conditions and agree to abide by them.

( )
Signature of the person enrolled.

Place——————————

Date——————————

The above conditions have been read/explained to the person being enrolled by me.

Place—————————— ( )

Date—————————— Signature of the Enrolling Officer.

PART III

Health Certificate

I do hereby certify that I have examined———————————candidate for employment in the Border Security Force. He fulfills medical standards laid down for the Border Security Force and I cannot discover that he has any disease, constitutional affliction or bodily infirmity. His age according to his own statement is———————————years and by appearance———————————years.

Height———————————Cms.

Cheat (a) Maximum———————————Cms.

(b) Minimum———————————Cms.

Signature of the Medical Officer.

Place———————————

Date——————————— Designation.

APPENDIX II

(Rule 39)

From of Delay Report

Confidential

No. ———————————

Unit address ———————————

Date ———————————

To

———————————

SUBJECT : 1*st*, (2*nd*), (3*rd*), (4*th*), *etc., Eight day delay report Pursuant to the BSF Act Section 59 and Rule* 39

1. No.....Rank.....Name.....
2. Offence ———————————
3. Date of Offence———————————
4. Date of offence was discovered———————————
5. Date of (open/close) arrest———————————
6. Date of release to open arrest/ release without Prejudice to rearrest (if not released, reasons)———————————
7. Record of evidence made on (If not recorded, reasons)———————————
8. Application for trial made on———————————
9. Date due to be tried———————————
10. Reason for delay ———————————

———————————

(COMMANDANT)

Copy to :—

1. Inspector General (In the cace of the (8th) and subsequent reports).
2. Director General (Special report in case the accused is under close arrest for more than 3 months without a trial).

APPENDIX III
[Rule 40 (2)]

Serial No.	Date	Name of the Accused	Name of the Officer or Subordinate Officer to whom request or representation made	Particulars of the request or representation	Orders of the Commandant	Signature and date of the Officer or subordinate Officer who conveys the orders of the Commandant to the accused	Remarks
1	2	3	4	5	6	7	8

APPENDIX IV

[(Rule 43)]

Form for use at summary proceedings of under-officers and other enrolled persons under Sec. 53 of the Border Security Force Act.

OFFENCE REPORT

Company _____
Serial No. _____
For week endng _____
Last report submitted on _____

Charges against No. _____ Rank _____ Name _____

Place and date of offence	Offence	Plea	Names of witnesses	Punishment awarded	Signature, Rank and designation of officer by whom awarded and date of award	Date of entry in conduct sheet	Remarks
1	2	3	4	5	6	7	8

Signature of Commandant of the Battalion

Instructions :

Col. 1. In cases of absence without leave/desertion, the ' date of offence'' will be the first day of absence.

Col. 2. The section and sub-section of the BSF Act under which the charge is preferred will be inserted above the statement of offence.

Col. 4. An officer cannot deal summarily with a case in which he is the sole prosecution witness.

Col. 5. Must be completed strictly in accordancde with the heading.

NOTE : This will be prepared in duplicate.
A copy along with a prescis of evidence where made shall be sent to the Deputy Inspector General.

APPENDIX V
[(Rule 52)]

From of Application for a Security Force Court

Battalion/Unit

Station Date 19

Application for a Security Force Court

Sir,

I have the honour to submit charge(s) against No.————Rank———— Name————of the————Unit under my command, and request you to accord/obtain sanction, of————, that a Security Force Court may be assembled for his trial at————.

The case was investigated by (a)————

A Court of Inquiry was held on (b)————date———— at————(Station).

Presiding Officer————Rank, Name and Unit.

Members————

The accused is now at————. His general character is (c) I enclose the following documents(d).

1. Chargesheet (————copies) (e).
2. Record or abstract of evidence original (f) and 5 copies.
3. Original exhibits (g).
4. Correspondance (g).
5. Statement as to character( ) and the conduct-sheet of the accused (g).
6. List of witnesses for the prosecution and defence (with their present addresses (g).
7. List of Exhibits (h).
8. Statement by accused as to whether or not he desires to have an officer assigned by the convening officer to represent him at the trial (Rule 63) (h).

Signature of Commandant

(a) Here insert name of————

(i) Officer who investigated the charges

(ii) Company/equivalent Commander who made preliminary hearing into the case (Rule 44).

(iii) Officer who made the record of evidence (Rule 48).

(b) To be filled in if there has been a Court of Inquiry respecting any matters connected with the charges; otherwise to be struck out (Rule 60 (iii)).

(c) To be filled in by the Commandant

(d) Any items not applicable to be struck out.

(e) One copy each to Presiding Officer, Law Officer (if any), members Prosecutor and the accused.

(f) Original Record or abstract of Evidence to be sent to Presiding Officer.

(g) 3, 4, 5 and 6 to be returned to the Commandant of the Unit of the accused with the notice of trial.

(h) 7 & 8 to be sent to the Presiding Officer.

APPENDIX VI

[Rule 53(2)]

Charge-Sheet

The accused, No. ——— (if applicable) Rank——— Name———
Battalion/Unit———, is charged with :—

DISOBEYING THE LAWFUL COMMAND OF HIS SUPERIOR OFFICER
BSF ACT
Sec. 21(2)

in that he,

at———on———, disobeyed the lawful command of his superior officer. Rank——— Name——— of the same Battalion, to turn out for Commandant's parade, by not turning out.

Place———

Date———

A.B.
Commandant———Bn BSF.

*To be tried by a General/Petty Security Force Court

Place———

Date———

X.Y.
Inspector General/Dy. Inspector General
(or Staff Officer to IG/DIG)
Frontier.

*When the sanction is accorded for the trial of the grave offences by Summary Security Force Court [BSF Act Sec. 74(2)], a similar entry should be made on the charge sheet.

APPENDIX VII

[Rule 62]

Forms as to Security Force Court

Forms from Assembly of Security Force Court

General and Petty

Form of order for the Assembly of a General (or Petty) Security Force Court under the Border Security Force Act 1968.

Orders by———
(Place———Date———)

No.———
Rank———
Name———
———
——Bn/Unit

The details of officers as mentioned below will assemble at on the——— day of———for the purpose of trying by a——— Security Force Court the accused person (persons) named in the margin (and such other person or persons as may be brought before them)*

The senior officer to sit as Presiding Officer.

MEMBERS———
———
———
WAITING MEMBER ———
———
———

LAW OFFICER
———is appointed Law Officer.

INTERPRETER
———is appointed Interpreter.

PROSECUTOR
———is appointed Prosecutor.

*The accused will be warned, and all witnesses duly required to attend.
The proceedings (of which only two copies are required) will be forwarded to———.
Signed this———day of———.

Convening Officer.

*Any opinion of the Convening Officer with respect to the composition of the Court (See Rule 61) should be added here, thus :—

"In the opinion of the convening officer it is not practicable to appoint officers of different battalions/Units.

"In the opinion of the convening officer, officers of equal or superior rank to the accused are not available, having due regard to the public service".

*Add here any order regarding Counsel. [See Rule 62(g)].

APPENDIX VIII

[Rule 106]

In exercise of the powers conferred on me by Section 105 of the Border Security Force Act 1968, I———————hereby order that———————be delivered/paid to———————(be confiscated/destroyed).

Signature

Place———————— (Confirming authority)

Date————————

APPENDIX IX

[Rule 106(8)]

The finding and sentence of the General/Petty Security Force Court held at———————(place)———————from———————day to———————day for the trial of the accused———————were promulgated to the accused by me at———————(place) on———————day of———————19 .

Extracts for battalion records have been taken/*No record has been kept of the finding and sentence.

Place———————— Signature

Date———————— (Commandant)

*To oe used in case of acquittal on all charges.

APPENDIX X

[Rule 163]

Warrants Under Section 121 and 125 of the Border Security Force Act 1968

FORM 'A'

Warrant of commitment for use when a prisoner is sentenced to imprisonment for life. (Sec. 121).

To

The Superintendent

of the (a)———————Prison.

Whereas at a General Security Force Court, held at———————on the———————day of———————, 19 , (No.———————Rank———————Name———————Unit———————) was convicted of (the offence to be briefly stated here, as "desertion on active duty", "correspondence with the enemy", "or as the case may be").

And whereas the said General Security Force Court on the———————day of———————19 , passed the following sentence upon the said (Name———————) that is to say

(Sentence to be entered in full, but without signature.)

And whereas the said sentence had been duly confirmed by (b) as required by law (c).

This is to require and authorise you to receive the said (Name———————) into your custody in the said prison as by law is required, together with this warrant, until he shall be deliverd over by you with the said warrant to the proper authority and custody for the purpose of undergoing the aforesaid sentence of imprisonment. The aforesaid sentence has effected from the (d).

Given under my hand at———————this the———————day of———————19 .

Signature(s)

(a) Enter name of civil prison.
(b) Name and description of confirming authority.
(c) Add if necessary "with a remission of———————".
(d) Enter date on which the original sentence was signed.
(e) Signature of Commandant of the prison or other prescribed officer.

APPENDIX X

[Rule 163]

FORM 'B'

Warrant of commitment for use when a prisoner is sentenced to imprisonment which is to be undergone in a civil prison (BSF Act Section 121).

To

The Superintendent

of the (a)————————Prison.

Whereas at a (b)————————Security Force Court held at————————on the————————day of————————, 19 , (No.————————Rank————————Name————————Unit————————) was duly convicted of (the offence to be briefly stated here, as 'desertion', 'theft', 'receiving stolen goods', 'fraud', 'disobedience of lawful command' or as the case may be).

And whereas the said (b)————————Security Force Court on the————————day of————————, 19 , passed the following sentence upon the said (Name————————) that is to say————————

(Sentence to be entered in full, but without signature)

And whereas the said sentence

————————

(c) has been duly confirmed by (d) as required by law(e) is by law valid without confirmation

This is to require and authorise you to receive the said (Name————————) into your custody together with the warrant and there carry the aforesaid sentence of imprisonment into execution according to law. The sentence has effect from the (f)————————.

Given under my hand at————————this the————————day of————————19

Signature(g)

————————

(a) Enter name of civil prison.

(b) General, Petty or Summary.

(c) Strike out inapplicable words.

(d) Name and description of confirming authority.

(e) Add if necessary 'with a remission of————————'.

(f) Enter date on which the original sentence was signed.

(g) Signature of Commandant of prisoner or other prescribed officer.

APPENDIX X

[Rule 163]

FORM 'C'

Warrant for use when a sentence of imprisonment for life is reduced by superior authority to one of a shorter period. (Section 125).

To

The Superintendent

of the (a)————————Prison

Whereas (No.————————Rank————————Name————————)(late) of the unit is confined in the(a)————————prison under a warrant issued by (b) in pursuance of a sentence of (c)————————passed upon him by a (d)————————Security Force Court held at————————on————————. And whereas (e)————————has, in the exercise of the power conferred upon him by the Border Security Force Act, passed the following order regarding the aforesaid sentence : that is to say :—(f)————————

This is to require and authorise you to keep the said (name)————————in your custody together with this warrant in the said prison as by law is required until he shall be delivered over by you with the said warrant to the proper authority and custody, for the purpose of his undergoing the punishment of imprisonment for life under the said order. And this is further to require and authorise you to return to me the original warrant of commitment in lieu whereof this warrant is issued.

*The period of such imprisonment will reckon from the (g).

Given under my hand at————————this the————————day of————————19

Signature(h)

(a) Enter name of civil prison.

(b) Enter name or designation of officer who signed original warrant.

(c) Enter original sentence (if this was reduced by the confirming officer or other superior authority the sentence should be entered thus :—"Life (imprisonment reduced by confiming officer to 10 years").

(d) General.

(e) Neme and designation of authority varying the sentence.

(f) Order to be sent out in full.

(g) Enter date on which original sentence was signed.

(h) Signature of prescribed officer.

APPENDIX X

[Rule 163]

FORM 'D'

Warrant for use when prisoner is to be delivered into force custody.

To

The Superintendent

of the (a)————————Prison.

Whereas (No.————————Rank————————Name————————)(late) of the————————unit is confined in the (a)———————— prison under a warrant issued by (b)————————in pursuance of sentence of (c)————————passed upon him by a (d)————————Security Force Court held at————————on————————, and whereas (e)————————has, in exercise of the powers conferred upon him by the Border Security Force Act passed the following order regarding the aforesaid sentence; that is to say (f)————

This is to require and authorise you to deliver forthwith the said (name) in your custody to the officer or subordinate officer bringing this warrant.

Given under my hand at————————this the————————day of————————19 .

Signature(g)

(a) Enter name of civil prison.

(b) Enter name or designation of officer who signed original warrant.

(c) Enter original sentence (if this was reduced by the confirming officer or other superior authority the sentence should be entered thus :—"2 years rigorous imprisonment reduced by confirming officer to 1 year".

(d) General, Petty or Summary.

(e) Name and designation of authority issuing the order.

(f) Order to be set out in full.

(g) Signature of prescribed officer.

APPENDIX XI

[Rule 164(1)]

FORM 'A'

Warrant committing to civil prison custody a person sentenced to death.

To

The Superintendent of the (a)————————Prison.

Whereas a (b)————————Security Force Court held at————————on the————day of————————, 19, (No.————————Rank————————Name————————) of the————————Unit was convicted of————————(Offence to be briefly stated) :

And whereas the said (b)————————Security Force Court on the————day of————————19, passed sentence of death by being hanged, on the said (NAME) :—

and the said sentence of death has been confirmed by the Central Government.

This is to require and authorise you to receive the said (Name)————————into your custody and to carry out the sentence of death on————————.

Given under my hand at————————this the————————day of————————19 .

Signature (c)

(a) Enter name of civil prison.

(b) General.

(c) Signature of the Director General.

APPENDIX XI

[Rule 164 (2)]

FORM 'B'

Warrant to obtain person sentenced to death from civil custody in order to carry out such sentence.

To

The Superintendent
of the (a)————————Prison.

Whereas (No.————————Rank————————Name————————) (late) of the————————Unit having been sentenced to suffer death on the————day of———————— 19 by a (b).....security Force Court held at..... is held in the said prison under a warrant by (c)

And whereas the said sentences having been duly confirmed by (d).....as by Law required an order to carry out the said sentence has been issued to me(e)..... (Name and Rank) .....

This is to require and authorise you to deliver forthwith the said (Name)..... to the officer/Subordinate Officer/Under-Officer bringing this warrant.

Given under my hand at.....this day of .....19 .

Signature (f)

(a) Enter name of civil prison.

(b) General.

(c) Enter name or designation of officer who signed original warrant.

(d) Name and description confirming authority.

(e) Name and designation of the officer to whom the order is issued.

(f) Signature of the officer by whom the order is issued.

APPENDIX XI

[Rule 164(2)]

FORM 'C'

Warrant to carry out sentence of death.

To

The Deputy Inspector General,.....

Whereas a (a).....Security Force Court held at..... on the.....day of .....,19. (No..... Rank.....Name.....) of the..... .....Battalion/Unit was convicted of ....(Offence to be briefly stated).

And whereas the said (a).....security Force Court on the..... .....day of .....,19 , passed sentence of death by being shot on the said (Name).....and the sentence of death has been confirmed by the Central Government.

This is to require and authorise you to carry out the sentence of death on.....

Given under my hand at.....this the.....day of .....19 .

Signature (b)

(a) General.

(b) Signature of the Director-General.

APPENDIX XII

[Rule 165]

FORM 'A'

Warrant for use when the sentence of a person under sentence of death and committed to custody in a civil prison is commuted to a sentence of imprisonment for life.

To

The Superintendent of the (a).....Prison.

Whereas (No.....Rank.....Name.....)(late) of the..... Unit is held in the (a).....Prison under a warrant issued by (b)..... in pursuance of a sentence of death passed upon him by (c).....Security Force Court held at .....on.....and whereas (d).....has, in exercise of the powers conferred upon him by the Border Security Force Act passed the following order regarding the aforesaid sentence:
that is to say (e).....

This is to require and authorise you to keep the said (Name).....in your custody together with this warrant in the said prison as by law is required until he shall be delivered over by you with the said warrant to the proper authority and custody for the purpose of his undergoing the punishment of imprisonment for life, under the said order. And this is further to require and authorise you to return to me the original warrant of commitment in lieu where of this warrant is issued. This period of such imprisonment for life will reckon from the (f)..... Given under my hand at.....this the.....day of.....19 .

Signature (g)

(a) Enter name of civil prison.

(b) Enter name or designation of the officer who signed original warrant.

(c) General.

(d) Name and designation of authority commuting the sentence.

(e) Order to be set out in full.

(f) Enter date on which original sentence was signed.

(g) Signature of Commandant.

APPENDIX XII

[Rule 165]

FORM 'B'

Warrant for use when the sentence of a person under sentence of death and committed to custody in a civil prison is commuted to a sentence of imprisonment to be served in the same prison.

To

The Superintendent of the (a).....Prison.

Whereas (No.....Rank.....Name.....)(late) of the..... Unit is held in the (a) Prison under a warrant issued by (b).....in pursuance of a sentence of death passed upon him by a (c).....Security Force Court held at .....on.....and whereas (d).....has in exercise of the powers conferred upon him by the Border Security Force Act, passed the following order regarding the aforesaid sentence, that is to say:- (e) .....

This is to require and authorise you to keep the said (Name).....in you custody together with this warrant, and there to carry into] execution the punishment of imprisonment under the said order according to law.

And this is further to require and authorise you to return to me the original warrant of commitment in lieu whereof this warrant is issued. This period of such imprisonment will reckon from the (f).....

Given under my hand at.....this the.....day of.....19

Signature (g)

(a) Ener name of civil prison.
(b) Enter name or designation of officer who signed original warrant.
(c) General.
(d) Name and designation of authority commuting the sentence.
(e) Order to be set out in full.
(f) Enter date on which original sentence signed.
(g) Signature of Commandant.

APPENDIX XII

[Rule 165]

FORM 'C'

Warrant for use when a person who, after having been sentenced to death has been committed to custody in a civil prison is to be delivered into the Force custody for a purpose other than carrying out the sentence of death.

To

The Superintendent of the (a).....Prison.

Whereas (No.....Rank .....Name.....)(late) of the..... Unit is held in the (a).....Prison under a warrant issued by (b)..... in pursuance of a sentence of death passed upon him by a (c).....Security Force Court held at.....on.....and whereas (d).....has in exercise of the powers conferred upon him by the Border Security Force Act passed the following order regarding the aforesaid sentence; that is to say (e).....

This is to require and authorise you to forthwith deliver the said (name)..... to the officer/subordinate officer or under officer bringing this warrant.
Given under my hand at.....this the.....day of.....19

Signature(f)

(a) Enter name of civil prison.
(b) Enter name or designation of officer who signed original warrant.
(c) General
(d) Name and designation of authority issuing order.
(e) Order to be set out in full.
(f) Signtature of Commandant.

APPENDIX XII

[Rule 165]

FORM 'D'

Warrant for use when a prisoner is pardoned or his trial set aside, or when the whole sentence or the unexpired protion thereof is remitted (Section 125).

To

The Superintendent

of the (a).....Prison.

Whereas (No.....Rank.....Name.....) of the..... Unit is confined in the (a).....Prison under a warrrant issued by (b)..... in pursuance of a sentence of (c).....passed upon him by a (d)..... Security Force Court held at.....on..... and whereas (e)..... .....has, in exercise of the powers conferred upon him by the Border Security Force Act, passed the following order regarding the aforesaid sentence, that is to say (f).....

.....

This is to require and authorise you to forthwith discharge the said (Name).....from your custody unless he is liable to be detained for some other cause, and for your so discharging him this shall be your sufficient warrant.

Given under my hand at.....this the.....day of.....19 .

Signature (g)

(a) Enter name of civil prison.
(b) Enter name or designation of officer who signed original warrant.
(c) Enter original sentence (if this was reduced by the confirming officer or other superior authority the sentence should be entered thus: (2 years rigorous imprisonment reduced by confirming officer to 1 year)
(d) General, petty and (or) Summary.
(e) Name and designation of authority pardoning prisoner, mitiating sentence or setting aside trial.
(f) Order to be set aside in full.
(g) Signature of prescribed officer.

APPENDIX XIII

[Rule 174(1) (a)(iii)]

Report on unnatural Death

1. Place of death, or the place where dead body was found (give details).

2. Date and time at which information of death was received.

3. Name and description of two or more persons who indentify the dead body.

4. Name and particulars of the deceased and his status.

5. Condition of clothes worn by the deceased.

Note:—In case, examination by Doctor is awaited, above details should be collected without removing the clothes etc. of the deceased, the other details should be completed after the Doctor's examination.

6. Conditions of limbs, eyes and mouth.

7. Expression of face.

8. Marks of struggle on the dead body if any, injuries and abrasions, should be recorded showing their size and location.

NOTE: Depth of injury should be recorded but injuries should not be touched. If examination by Doctor is awaited the above information should be recorded after his examination.

9. Whether blood is fluid or coagulated. The place from which it came out and its quantity.

10. By which means, weapon or instrument, the injury or marks on struggle appear to have been caused.

11. Was any rope tied around the neck or is there any mark of it being tied by anything.

12. Was the rope or any other thing used to strangle or hang dead body, was, it strong enough to sustain the weight and whether its other end was tied to anything.

13. Was any external article like grass etc. sticking to hairs or held in his hand or sticking to any other part of the body.

14. Is the dead body that of a strong and well-built man or is it that of a weak or old man.

15. Is the dead body strong or weak or is it in decomposed state.

16. Length of the dead body from head to feet.

17. Identification marks and location and appearance of the wounds.

18. Apparent cause of death.

19. Is there any rumour or other circumstances showing that it is a case of suicide.

Details of articles found on the dead body or lying near it

20. Those found on the dead body (A slip will be affixed on each article which will be stamped).

21. Those found lying near the dead body (a slip duly stamped will be affixed on each article).

Description of the seal

22. Map of the place where the dead body was found.

Brief history of the case.

Signature of two or more respectable witnesses of the locality in whose presence investigation was carried out.

Place .....

Signature of the Officer Investigating the case

Date.....

Name.....Rank.....

APPENDIX XIV

[Rule 180]

PART I

FORM I

Form for use at summary trials of or below the rank of subordinate Officers (Under Section 55 of the Act).

Accused———————————————————————

Rank and Name———————————————————————

Unit———————————————————————

When the authority dealing summarily with the case decides (with the written consent of the accused) to dispense with the attendance of witnesses:

Question to accused:—

1. Have you received a copy of the charge sheet and record or abstract of evidence?

Answer :

2. Have you had sufficient time to prepare your defence?

Answer :

3. The Charge sheet is read.
Are you guilty or not guilty of the charge/s against you which you have heard/read?

Answer :

4. Do you wish to make a statement?

Answer :

If the accused desires to make a statement he should do so now. If at the conclusion of the hearing the authority dealing summarily with the case considers that the charge should not be dismissed, he is to examine the accused's record of service or conduct sheet. If the authority dealing summarily with the case proposes to award a punishment other than a reprimand, severe reprimand or penal deductions, in the case of a subordinate officer, he shall put the following question to the accused.

5. Do you elect to be tried by Security Force Court or will you accept my award.

Answer:

FINDING ———————————————————————

AWARD ———————————————————————

STATION ———————————————————————

DATE ———————————————————————

NOTE :—Oral statement of the accused made in answer to question 4 will not be recorded. If the accused has submitted a written statement such statement is only to be forwarded with or attached to this form when a copy of the Record or Abstract of evidence is also required to be so forwarded or attached. This form will be kept with Confidential Character Roll of the Subordinate Officer.

APPENDIX XIV

[Rule 180]

PART I

FORM II

Form for use at summary trials of or below the rank of Subordinate officers (under Section 55 of the Act).

Accused _____

Rank & Name _____

Unit _____

When the authority dealing summarily with the case does not decide to dispense with the attendance of witnesses or when the accused requires their attendance.

Question to accused:

1. Have you received a copy of the charge sheet and the record or abstract of evidence?

   Answer:

2. Have you had sufficient time to prepare your defence?

   Answer:

3. Are you guilty or not guilty of the charge/s against you which you have heard/read?

   The witnesses give their evidence, accused being permitted to cross-examine.

4. Do you wish to make a statement?

   Answer :

5. Do you desire to call any witness?

   Answer:

   The accused makes a statement and his witnesses give evidence.

   If at the conclusion of the hearing, the authority dealing summarily with the case considers that the charge should not be dismissed with, he is to examine the accused's record of service or conduct sheet.

   If the authority dealing summarily with the case proposes to award a punishment other than a reprimand, severe reprimand or penal deductions, in the case of subordinate officer, he shall put the following question to the accused:—

6. Do you elect to be tried by Security Force Court or will you accept my award?

   Answer:

FINDING _____

AWARD _____

STATION _____

DATE _____

NOTE :—Oral statement of the accused made in answer to question 4 will not be recorded. If the accused has submitted a written statement, such statement is only to be forwarded with or attached to this form when a copy of the Record or Abstract of evidence is also required to be so forwarded or attached. This form will be kept with Confidential Character Roll of the Subordinate Officer.

[No. F.14/5/68-BS.I]

B. VENKATARAMAN, Jt. Secy.

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